



South Carolina House of Representatives

Legislative Update

Robert W. Harrell, Jr., Speaker of the House

Vol. 24

May 29, 2007

No. 20

MAJOR ISSUES FROM THE 2007 LEGISLATIVE SESSION

This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage.

This document will be revised and expanded weekly as the status of major bills changes. This report highlights legislative activity through Thursday, May 24, 2007. It is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

OFFICE OF RESEARCH

Room 213, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 734-3230

CONTENTS

Appropriations	03
Business/Economic Development	04
Conservation/Energy	10
Criminal Justice/The Courts	17
Education	25
Family/Health	34
Immigration	38
State/Local Government	40
Taxation	45
Transportation	46
Workers' Compensation	52

APPROPRIATIONS

The House of Representatives and the Senate have approved different versions of H.3620, the Fiscal Year 2007-2008 general appropriations act, and H.3621, a joint resolution providing for Capital Reserve Fund appropriations. Highlights of the State government budget of over \$7 billion proposed by the House for the upcoming fiscal year include:

- \$81 million for state income tax relief so as to reduce the personal income tax top marginal rate from 7 percent to 6.8 percent.
- \$20 million for tourism promotion.
- \$5 million to assist communities throughout the state with tourism-related product development.
- funds for a 3 % state employee pay raise.
- full funding of the Education Finance Act's Base Student Cost.
- full funding of the school bus fleet rotation.
- an increase in the amount provided to teachers for purchasing classroom supplies from \$250 to \$275.
- funding for access to LightRail, a broadband, high-speed optical research network that will link all major research universities with their hospital partners.
- \$22 million to expand coverage of the Children's Health Insurance Program for children of low-income families.
- \$4.5 million for treatment of autism and other Pervasive Development Disorders
- \$3 million for the AIDS Drug Assistance Program
- \$2.6 million for additional full time employees in food service inspections and dairy product testing at the Department of Health and Environmental Control
- \$9 million for new law enforcement officers at the Department of Public Safety.
- \$5 million for law enforcement officer vehicle fleet rotation.

The Senate approved a different appropriations plan for the upcoming fiscal year which includes such provisions as funds for the implementation of a phase-out of sales taxes collected on groceries; full funding of the Electronic Library which allows the State's colleges to share academic research materials; \$1.3 million increase for National Guard scholarships; \$1.6 million for prosecution of driving under the influence cases; \$1.7 million for purchasing of TamiFlu for influenza pandemic; \$1 million for nursing and clinical staff recruitment and retention; \$2 million for agri-tourism and economic development; and \$700,00 for I-95 Corridor and Global Logistic Triangle.

STATUS: The House of Representatives and the Senate passed H.3620, the Fiscal Year 2007-2008 general appropriations act, and H.3621, a joint resolution providing for Capital Reserve Fund appropriations, in different versions. Conference committees have been appointed to work on compromise legislation.

BUSINESS/ECONOMIC DEVELOPMENT

COASTAL PROPERTY INSURANCE

The House of Representatives approved and sent to the Senate **H.3820**, the “Omnibus Coastal Property Insurance Reform Act of 2007.” The legislation addresses the recent scarcity of affordable property insurance for homes located along the South Carolina coast that has been prompted by losses insurance companies have experienced during severe hurricane seasons in Florida and the Gulf Coast.

Catastrophe Savings Accounts

The legislation provides for the creation of a Catastrophe Savings Account which is a regular savings account or money market account established to cover a deductible under an insurance policy for legal residence property that covers hurricane, rising floodwaters, or other catastrophic windstorm event damage or to cover self-insured losses sustained by legal residence property during such events. A taxpayer is allowed a state individual income tax deduction for a contribution to a Catastrophe Savings Account and all interest income earned by such an account is exempt from the state income tax. The total amount that may be contributed to a Catastrophe Savings Account may not exceed: (a) in the case of an individual whose qualified deductible is not more than one thousand dollars, two thousand dollars; (b) in the case of an individual whose qualified deductible is more than one thousand dollars, the amount equal to the lesser of fifteen thousand dollars or twice the amount of the taxpayer's qualified deductible; or (c) in the case of a ‘self-insured’ individual who chooses not to obtain insurance on his legal residence, two hundred fifty thousand dollars, but shall not exceed the value of the individual taxpayer's legal residence. Distributions from the account that are used for qualified catastrophe expenses are not subject to the state individual income tax.

Tax credit for insurance premiums

The legislation establishes a state individual income tax credit for insurance premium costs paid on the taxpayer's legal residence in excess of 5% of the taxpayer's adjusted gross income. The tax credit may not exceed \$1,250, and any unused credit may be carried forward for five succeeding taxable years.

Tax credits for retrofitting residences to make them more storm resistant

The legislation establishes a state income tax credit for costs incurred by an individual to retrofit his legal residence in order to make it more resistant to loss due to hurricane, rising water, or other catastrophic wind event. The credit for any taxable year may not exceed 25% of the cost incurred or \$1,000, whichever is less. The Director of the Department of Insurance defines, through regulation, which fortification measures qualify for this credit. The legislation provides for a state individual income tax credit for state sales or use taxes paid on purchases of property used to retrofit an individual's legal residence. The maximum credit allowed is \$1,500.

Insurance premium discounts

The legislation requires rating plans for essential property insurance in the coastal area to include premium discounts or credits for such retrofitting measures as the use of

Legislative Update, May 29, 2007
Major Issues #3

storm shutters and roof tie downs and for other specified factors relating to the reduction of storm damage risk.

Required disclosure of the availability of discounts and credits

The legislation requires insurance companies to disclose to insureds upon issuance or renewal of a policy the availability of premium discounts or credits allowed for retrofitting and techniques for reducing windstorm losses. The notice must describe generally what measures the policyholders may take to reduce their windstorm premium.

Insurance policies and rates

The legislation extends from 30 to 60 days the required notification period for cancellation or non-renewal of insurance policies.

The legislation revises the approval process for insurance rate changes so as to clarify that the prohibition against a rate being excessive, inadequate or unfairly discriminatory applies even to rates falling within the plus-or-minus 7% flex-rating band. The legislation also clarifies that the Department of Insurance may consider the impact of a rate on individual territories and insureds when determining whether a rate is excessive, inadequate or unfairly discriminatory.

Filing fee for hurricane loss projection models

To recover the costs associated with the review and evaluation of catastrophe models, the legislation authorizes the Director of the Department of Insurance to impose a filing fee on: (a) all insurers who use catastrophe or other computer simulated models; and (b) modelers or modeling organizations that submit a model to the department for its review, evaluation, or approval. This fee must be retained by the department to defray the costs of retaining actuaries and other experts to evaluate such models.

Premium tax credit for insurers

The legislation provides that an insurer providing full property and casualty coverage, to specifically include wind and hail coverage, to property owners within the coastal area may claim as a nonrefundable credit against the premium tax an amount equal to 25% of the tax that otherwise is due on the premium written for the property owners for the taxable year. The tax credit applies to new policies with an effective date of January 1, 2008, or after.

Emergency powers of the Director of the Department of Insurance

The Director of the Department of Insurance is authorized to issue one or more general orders upon the declaration of a State of Emergency by the Governor. An emergency order is effective for up to 120 days, but may be extended by the Director for additional 120-day periods if the Director determines that emergency conditions still exist. The General Assembly may terminate the Director's order by a concurrent resolution. The emergency order must be published in the State Register along with an explanation of how it facilitates recovery. By order, the Director may also adopt any rule that facilitates recovery from the emergency. The Department of Insurance may issue an order relating to standardized requirements applicable to insurers as a consequence

Legislative Update, May 29, 2007
Major Issues #3

of a hurricane or other natural disaster. Such an order must address: (1) claims reporting requirements; (2) grace periods for payment of premiums and performance of other duties by insureds; (3) temporary postponement of cancellations and nonrenewals; and (4) any other rule the Director considers necessary.

Revisions to the South Carolina Wind and Hail Underwriting Association

The legislation specifies that the South Carolina Wind and Hail Underwriting Association shall function as a residual market mechanism to provide wind and hail insurance for residential and commercial property to applicants who are unable to procure this insurance in the coastal area. The legislation further specifies that, as a residual market mechanism, the association is not intended to offer rates competitive with the admitted market. Rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self-sustaining mechanism. The association and the Director are to monitor the rate adequacy of the association on a semi-annual basis. The Director is authorized to take corrective action on rates by order subject to review by the Administrative Law Court.

The legislation authorizes the Director to expand the area in which the Wind and Hail Underwriting Association provides essential property insurance for a period of up to 24 months and one renewal period of up to 24 months. In determining whether an expansion is warranted, the Director must consider the following criteria: changes in the number of insurers writing essential property insurance in the seacoast area and their capacity; changes in the extent to which surplus lines insurers are providing such coverage; changes in reinsurance activity impacting insurers writing essential property insurance; changes in demand for property insurance in the seacoast area; and any other information considered relevant. The Director must declare conditions that threaten to destabilize the property insurance market and the continued consistent availability of essential property insurance. The Director may not expand the association's territory beyond the seacoast area. The General Assembly may vacate any expansion order by passage of a joint resolution.

The legislation expands the powers of the association so as to allow it to: (1) receive, hold and transfer personal and real property; (2) contract for goods and services; (3) solicit and accept goods, loans, grants, etc.; (4) borrow funds; (5) issue bonds, surplus notes, or other debentures.

The legislation revises the definition of "insurable property" to include a structure built in compliance with the most recent building code adopted by the Building Codes Council or the building code in existence at the time of construction or the standards promulgated under the National Manufactured Housing Construction Standards and Safety Act.

The legislation provides for a specific expansion to the defined "coastal area" in Georgetown County.

South Carolina Hurricane Loss Mitigation Grant Program

The legislation creates the South Carolina Hurricane Loss Mitigation Grant Program within the Department of Insurance and provides for an advisory council to the Director to administer the program along with a program administrator. The program administrator shall apply for financial grants to be used to assist single-family, site-built

Legislative Update, May 29, 2007
Major Issues #3

or manufactured or modular homes, owner occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. In order to be eligible for a grant, the property must have been granted a homestead exemption, have an insured value of \$300,000 or less, and have undergone an acceptable wind certification and hurricane mitigation inspection. Grants must be matched by the property owner on a dollar-for-dollar basis up to a total of \$10,000 with the State's contribution not to exceed \$5,000. Low income property owners (i.e. those whose adjusted gross income does not exceed 80% of the median annual adjusted gross income for households within the county where the person or family resides) are eligible to receive a grant of up to \$5,000 with no required match so long as the home's value does not exceed \$150,000. The legislation specifies improvement projects for which grants may be approved including roof deck attachment, secondary water barrier improvements, installation or repair of tie downs, and reinforcement of roof-to-wall connections.

Funding for the program is subject to annual legislative appropriations. Matching fund grants are also to be made available to local governments and nonprofit entities for projects that reduce hurricane damage to single-family, site-built or manufactured or modular homes, owner-occupied, residential property. The Department is also directed to make efforts to obtain federal government funding for the program. Additionally, this program must be implemented by the department through the use of the premium taxes due to this State by the South Carolina Wind and Hail Underwriting Association, and 1% of the premium taxes collected annually and remitted to the Department of Insurance.

*The Senate approved and sent to the House of Representatives **S.499**, the "South Carolina Coastal Captive Insurance Act of 2007." The legislation provides for the manner in which a South Carolina Coastal Captive Insurance Company may be formed, licensed, and regulated. The legislation defines and limits the types of risk a South Carolina Coastal Captive Insurance Company may underwrite and establishes minimum capitalization requirements for such companies. The legislation permits the Director of the Department of Insurance to set additional discretionary capitalization requirements necessary to protect the public. The bill provides for certain required disclosures to consumers in all applications for insurance and policies, including an approved business plan. In an effort to stabilize the property insurance market, the bill allows the Insurance Department Director to expand the coastal area (with certain parameters to be considered by the Director) in which the association shall provide coverage (within specified timelines).*

STATUS: The House approved **H.3820** on May 9, 2007, and sent the bill to the Senate. On May 24, the Senate Banking and Insurance Committee reported out **H.3820** favorable with amendments. The Senate approved **S.499** on April 26, 2007, and sent the bill to the House of Representatives where it has been referred to the Labor, Commerce and Industry Committee.

"ENERGY FREEDOM AND RURAL DEVELOPMENT ACT"

See summary under Conservation/Energy

HYDROGEN INFRASTRUCTURE DEVELOPMENT ACT

See summary under Conservation/Energy

JASPER COUNTY PORT FACILITY

The General Assembly has approved and the Governor signed into law **H.3505**, legislation relating to a Jasper County port facility. This joint resolution directs the State Ports Authority to continue and bring to its earliest conclusion the condemnation action it has begun involving approximately one thousand eight hundred acres in Jasper County needed for new terminal facilities. The joint resolution establishes a timeline for completion of site acquisition, engineering studies, market analysis, submission of environmental impact statements, application for necessary permits, site preparation, and design and construction of the Jasper County Port facilities and its supporting infrastructure.

The joint resolution establishes the Savannah River Maritime Commission to negotiate with the State of Georgia, the U.S. Army Corps of Engineers, and others regarding the use of the Savannah River as a waterway for ocean-going container or commerce vessels. The twelve-member commission is composed of: (1) the Governor or his designee (who serves as chairman); (2) the Speaker of the House of Representatives or his designee; (3) the President Pro Tempore of the Senate or his designee; (4) the Attorney General of South Carolina or his designee; (5) the Chairman of the Board of Health and Environmental Control to serve ex officio or his designee; (6) the Chairman of the Board of Natural Resources to serve ex officio or his designee; (7) the Chairman of the State Ports Authority to serve ex officio or his designee; (8) the Chairman of the Senate Finance Committee or his designee; (9) the Chairman of the Senate Transportation Committee or his designee; (10) the Chairman of the House Ways and Means Committee or his designee; (11) the Chairman of the House Education and Public Works Committee or his designee; and (12) one resident of Jasper County appointed by the Jasper County Council to serve at the pleasure of the council.

The joint resolution also creates the Jasper County Port Facility Infrastructure Fund. The fund shall be used for expenses and administrative fees incurred by the county for infrastructure and service provision requirements related to the Jasper County Port Facility.

*STATUS: Having passed the General Assembly, **H.3505** (R.35) was signed into law by the Governor on May 1, 2007.*

"REGISTRATION OF IMMIGRATION ASSISTANCE ACT"

See summary under Immigration

RURAL INFRASTRUCTURE ACT

See summary under State/Local Government

"SOUTH CAROLINA CRITICAL NEEDS NURSING INITIATIVE ACT"

See summary under Family/Health

WIRELESS TECHNOLOGY AND COMMUNICATIONS COMMISSION

The House of Representatives approved, and sent to the Senate **H.3569**, a joint resolution creating the South Carolina Wireless Technology and Communications Commission for the purpose of implementing a statewide wireless broadband network. The commission is composed of the following thirteen members, of whom eleven are voting members and two are nonvoting members: (1) two members of the South Carolina Senate appointed by the President Pro Tempore of the Senate; (2) two members of the House of Representatives appointed by the Speaker of the House of Representatives; (3) two members of the private sector appointed by the President Pro Tempore of the Senate; (4) two members of the private sector appointed by the Speaker of the House of Representatives; (5) one member from the private sector appointed by the Governor; (6) the Secretary of Commerce or his designee; (7) the Chairman of the South Carolina Educational Television Endowment; (8) the State Chief Information Officer (CIO), or his designee, shall serve ex officio in a nonvoting and advisory capacity; and (9) the Executive Director of the Office of Regulatory Staff, or his designee, shall serve ex officio in a nonvoting and advisory capacity.

*STATUS: The House of Representatives approved **H.3569** on April 25, 2007, and sent the joint resolution to the Senate where it has been referred to the Judiciary Committee.*

CONSERVATION/ENERGY

BASE LOAD REVIEW OF NEW ELECTRICAL GENERATING FACILITIES

The General Assembly approved **S.431**, a bill pertaining to electric utilities. The legislation enacts the "Base Load Review Act" which establishes a procedure allowing an investor-owned electric utility to recover from ratepayers some of the costs associated with constructing a new large generating facility prior to the completion of the project. A base load plant covered by the legislation is a new coal or nuclear fueled electrical generating facility that is designed to be operated, at a capacity factor exceeding seventy percent annually, has a gross initial generation capacity of at least three hundred fifty megawatts, and is intended in whole or in part to serve retail customers of a utility in South Carolina. The legislation requires applications for the recovery of capital costs to be reviewed by the Public Service Commission. Following a satisfactory review, the commission is authorized to issue an order establishing that, if a plant is constructed in accordance with an approved construction schedule and approved capital costs estimates, the capital costs for construction of the plant are prudent utility costs and are properly recovered by the utility through revised rates. The

Legislative Update, May 29, 2007
Major Issues #3

legislation provides for review by the Public Service Commission Office of Regulatory Staff representing the public interest.

S.431 revises service rights of electric suppliers. The legislation establishes provisions for 'corridor rights' and other provisions to enhance predictability in the determination of which electric supplier has the right to provide service in a given area or location. The legislation establishes provisions specifying situations in which electric suppliers must obtain Public Service Commission approval for construction of facilities

S.431 also expands what is considered a fuel cost that a utility is authorized to recover from its ratepayers. The expanded definition of fuel costs includes the cost

Legislative Update, May 29, 2007
Major Issues #3

of fuel transportation and costs associated with compliance with federal environmental requirements for reducing or treating emissions.

*STATUS: Having passed the General Assembly, **S.431** (R.28) became law without the Governor's signature on May 3, 2007 (Act 16).*

“ENERGY FREEDOM AND RURAL DEVELOPMENT ACT”

The House of Representatives approved and sent to the Senate **H.3649**, the “Energy Freedom and Rural Development Act,” which establishes various incentives to encourage biomass fuel development and utilization.

The legislation provides for a sales tax rebate of three hundred dollars for an in-state purchase or lease of a Flex-Fuel Vehicle, hydrogen-fueled vehicle, advanced lean-burn vehicle, hybrid vehicle, electric vehicle, plug-in hybrid vehicle, or high fuel-economy vehicle with a city fuel-economy rating by the United States Environmental Protection Agency (EPA) of thirty miles a gallon or higher. The legislation provides for a sales tax rebate of not more than five hundred dollars for the purchase of equipment for conversion of a conventional hybrid electric vehicle to a plug-in hybrid electric vehicle or for the in-state purchase of EPA-certified equipment for conversion of conventional vehicles to operate on propane, compressed natural gas, liquefied natural gas, hydrogen, or E85 (eighty-five percent ethanol and fifteen percent gasoline). These rebates are allowed beginning after June 30, 2007, and ending before July 1, 2010.

For taxable years beginning after 2007 and before 2011, the legislation allows a two thousand dollar state income tax credit for the in-state purchase or lease of a plug-in hybrid vehicle.

For taxable years beginning after 2007 and before 2012, the legislation provides an income tax credit equal to twenty-five percent of qualified expenditures for research and development of feedstocks and processes for cellulosic ethanol and for algae-derived biodiesel.

For taxable years beginning after 2006, and before 2014, the legislation establishes a new income tax credit equal to thirty cents for each gallon of noncorn ethanol or nonsoy oil biodiesel produced at a qualifying facility.

The legislation revises the existing provisions for income tax credits allowed for the utilization of solar energy systems.

For taxable years beginning after June 30, 2008, the legislation provides an eligible utility an income tax credit equal to the amount paid to the utility by qualified recycling facilities multiplied by ten percent.

The legislation provides for incentive payments for the sale of each gallon of specified ethanol-based and biodiesel alternative fuels. This incentive payment program begins after June 30, 2007, and ends before July 1, 2010, and shall be provided from the General Fund, excluding revenue derived from the sales and use tax.

Legislative Update, May 29, 2007
Major Issues #3

The legislation provides for incentive payments for production at qualifying facilities of electricity or methane gas fuel from biomass resources such as wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials. This incentive payment program begins after June 30, 2007, and ends before July 1, 2010, and shall be provided from the General Fund, excluding revenue derived from the sales and use tax.

*STATUS: On May 18, 2007, the House of Representatives approved **H.3649** and sent the bill to the Senate where it has been referred to the Finance Committee.*

“ENERGY INDEPENDENCE AND SUSTAINABLE INVESTMENT ACT OF 2007”

The Senate approved and sent to the House of Representatives **S.377**, the “Energy Independence and Sustainable Investment Act Of 2007,” which provides incentives for commercial construction and renovation that complies with “green building” energy efficiency and conservation standards. The legislation provides that a business that constructs a commercial facility project in this State that complies with specified green building standards is eligible to receive a state income tax credit equal to: (1) for the first ten thousand conditioned square feet, one dollar and fifty cents of tax credit per square foot; (2) for up to the next forty thousand conditioned square feet, seventy-five cents of tax credit per square foot; and (3) for the next fifty thousand conditioned square feet or greater, fifty cents of tax credit per square foot. The legislation provides for the size, scope, and amount of conditioned space that a construction or renovation project must include in order to qualify as an eligible commercial facility project.

The legislation establishes provisions under which a business that intends to construct a commercial facility project meeting the legislation’s green building standards may provide the Permitting Agency with an environmental performance bond in an amount that equals three percent of the total cost of the project, but does not exceed a maximum of three million dollars. Upon proof of posting an environmental performance bond, any additional required building permit from the same Permitting Agency shall be free of charge.

The Department of Revenue is required to submit an annual report regarding these commercial facility projects to the General Assembly that includes: (1) the number and types of buildings designed and constructed; (2) the amount of credit claimed in the previous taxable year; and (3) any conflicts or barriers that hinder the effectiveness of this legislation.

The legislation also provides that, upon recommendation of the South Carolina Chapter of the United States Green Building Council, the General Assembly shall annually honor not more than five businesses with the South Carolina Energy Independence Leadership Award.

*STATUS: The Senate approved **S.377** on May 22, 2007, and sent the bill to the House of Representatives where it has been referred to the Labor, Commerce and Industry Committee.*

GREEN BUILDING STANDARDS FOR STATE CONSTRUCTION PROJECTS

The House of Representatives approved and sent to the Senate **H.3034**, a bill establishing new “green building” energy efficiency and conservation standards for new state buildings with construction budgets exceeding fifteen million dollars. These new standards do not apply to: (1) design and construction of parking garages or outdoor sports facilities; (2) South Carolina State Ports Authority, South Carolina Public Service Authority, South Carolina Research Authority, South Carolina Department of Corrections, and a public entity exempted by the Budget and Control Board; (3) projects exempted by the Budget and Control Board as the result of evidence that compliance is clearly not in the best interest of the project; and (4) projects in design or being constructed on the effective date of this legislation. The bill specifically provides that nothing in the legislation alters the State’s Right to Work provisions which prohibit requirements that workers join or support unions and similar labor organizations.

*The Senate subsequently returned the bill to the House amended to provide for the “Energy Independence and Sustainable Construction Act of 2007.” The legislation requires new state-funded major facility projects to comply with specified “green building” energy efficiency and conservation standards. The legislation provides for the size and scope of construction or renovation that qualifies a project as a major facility project subject to the required standards. The legislation exempts from the green building requirements: (1) a building, regardless of size, that does not have conditioned space as defined by standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers; (2) a public kindergarten, elementary school, middle school, secondary school, junior high school, or high school; (3) a correctional facility constructed for the Department of Corrections, Department of Mental Health, or Department of Juvenile Justice; (4) a building project funded by the State Ports Authority, the Coordinating Council for Economic Development, or the State Infrastructure Bank; and (5) a building project funded by the Department of Health and Environmental Control where the primary purpose of the building project is for the storage of archived documents. The State Budget and Control Board is required to develop and implement a process to monitor and evaluate the energy and environmental benefits associated with each major facility project designed, constructed, or renovated in compliance with this legislation and submit an annual report to the General Assembly. STATUS: The House of Representatives approved **H.3034** on March 6, 2007, and sent the bill to the Senate. On May 25, the Senate returned the bill to the House with amendments.*

HYDROGEN INFRASTRUCTURE DEVELOPMENT ACT

The Senate and the House of Representatives have approved different versions of the “South Carolina Hydrogen Infrastructure Development Act” (**S.243**). The legislation approved by the House establishes within the State Treasurer’s Office the South Carolina Hydrogen Infrastructure Development Fund. The revenues of the fund must be distributed in the form of grants to the South Carolina Research Authority and used for the purpose of promoting the development and deployment of hydrogen production, storage, distribution, and dispensing infrastructure and related products and services

Legislative Update, May 29, 2007
Major Issues #3

that enable the growth of hydrogen and fuel cell technologies in the State. The General Assembly must not appropriate more than a total of fifteen million dollars in grants. Grants may not be made after June 30, 2012. Revenues remaining in the fund after that date, regardless of source, lapse to the General Fund of the State. The Authority shall administer the fund and provide grants for any purpose that furthers the creation of a sustainable foundation upon which a hydrogen economy may develop across the State. The Authority is required to submit an annual report to the Governor and General Assembly concerning the Fund. The Fund is authorized to receive donations, grants and any other funding as provided by law. A taxpayer may receive a state income tax credit equal to twenty-five percent of a qualified contribution to the Fund. The General Assembly shall make appropriations from the general fund to the South Carolina Hydrogen Infrastructure Development Fund as follows: seven million dollars for fiscal year 2007-2008; five million dollars for fiscal year 2008-2009; and, three million dollars for fiscal year 2009-2010. These appropriations made to the Fund may be distributed as grants only to the extent that there is a dollar-for-dollar match, in cash or in kind, from a source other than the State. However, the executive committee of the authority, based on the merits of a grant proposal and its projected economic benefit, may reduce or eliminate the matching requirement on a case-by-case basis.

The legislation provides that two percent of the gross profits derived from the sale of hydrogen and fuel cell products or services developed by a grant recipient that is organized and operating as a for-profit business must be annually remitted to the Fund through June 30, 2012, until the full amount of the original grant has been repaid. Thereafter, if the full amount has not been repaid, these annual remissions go to the general fund until a level of full repayment is reached.

The legislation provides for a state sales tax exemption for equipment or machinery operated by or used to distribute hydrogen fuel cells and for equipment and machinery used predominately for hydrogen fuel cell research and development. A state sales tax exemption is also provided for any building materials used to construct a new or renovated building or any machinery or equipment located in a research district so long as the amount of the sales tax that would be assessed without the exemption is invested in hydrogen or fuel cell machinery or equipment located in the same research district within twenty-four months.

The legislation also requires state agencies to consider purchasing equipment and machinery operated by hydrogen fuel cells.

*STATUS: The House of Representatives returned **S.243** to the Senate with amendments on May 3, 2007.*

OFFSHORE NATURAL GAS EXPLORATION FEASIBILITY STUDY

The House of Representatives approved and sent to the Senate **H.3828**, a joint resolution creating a State Government Study Committee to examine and report to the General Assembly on the feasibility of natural gas exploration in the Atlantic coastal waters of the State of South Carolina. The study committee is comprised of eighteen members to include: (1) six at-large members to be selected by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary

Legislative Update, May 29, 2007
Major Issues #3

of Commerce, including one member designated by the: (a) Speaker of the House of Representatives representing the state's agricultural industry; (b) President Pro Tempore of the Senate representing the state's environmental interests; (c) Secretary of Commerce representing the state's manufacturing industry; (d) Speaker of the House of Representatives representing the state's coastal tourism interests; (e) President Pro Tempore of the Senate representing the state's natural gas distributors; and (f) Secretary of Commerce representing the state's economic development interests; (2) one member from each of the state's six United States Congressional Districts who must be selected by the members of the General Assembly representing each United States Congressional District; (3) one member from the House of Representatives Minority Party selected by the House Minority Leader; (4) one member from the Senate Minority Party selected by the Senate Minority Leader; (5) one member from the House of Representatives Majority Party selected by the House Majority Leader; (6) one member from the Senate Majority Party selected by the Senate Majority Leader; and (7) the Chairman of the House of Representatives Labor, Commerce and Industry Committee, or his designee, and the Chairman of the Senate Judiciary Committee, or his designee, shall serve as co-chairmen of the committee. The committee shall use clerical and professional staff from the Department of Commerce and also may request the support of the professional and clerical staff of the standing committees of the House of Representatives and the Senate. In conducting its study, the committee shall consider comprehensive implications relating to energy, economic development, tourism, commercial and recreational fishing, the environment, agriculture, manufacturing, public safety, national security, employment, and possible impacts on state and local economies. The

Legislative Update, May 29, 2007
Major Issues #3

committee shall render its report and recommendations to the General Assembly before January 8, 2008, at which time it is dissolved.

STATUS: The House of Representatives approved H.3828 on April 25, 2007, and sent the joint resolution to the Senate where it has been referred to the Agriculture and Natural Resources Committee.

"PUBLIC WATERS NUISANCE ABATEMENT ACT"

The stated intent of this bill is to protect the waters of the State by authorizing the removal of nuisance structures from the public waters of the State in accordance with specified procedures and timetables. The bill allows the owners of structures to apply for a permit from the Department of Natural Resources (DNR) authorizing the owner to maintain his structure in its permitted location for five years. There is a fifty-dollar fee for the permit; permits are not allowed if the structure presents a hazard to navigation or encroaches upon private property. The permit may be revoked by DNR under certain circumstances. An unpermitted structure is declared to be a public nuisance. Reports of unpermitted structures must be made to the Attorney General, and the Attorney General is authorized to maintain an action for removal of the structure. The bill provides that magistrate's court shall have jurisdiction over these actions. The bill provides that it is unlawful for a person to operate or float a houseboat on the waters of this State unless it has a marine toilet that discharges only into a holding tank. The bill also includes criminal penalties for violations.

STATUS: Having passed the General Assembly, H.3466 (R56) became law without the Governor's signature on May 24, 2007.

STATE INCOME TAX CREDIT FOR PHOTOVOLTAIC, SOLAR, AND FUEL CELL EXPENDITURES

The House of Representatives approved and sent to the Senate H.3390, a bill that provides for a state income tax credit equal to twenty percent of the qualified expenditures of photovoltaic, solar, and fuel cell property credits allowed against a taxpayer's federal income tax liability.

STATUS: On May 17, 2007, the House of Representatives approved H.3390 and sent the bill to the Senate.

CRIMINAL JUSTICE/THE COURTS

"ALCOHOL EDUCATION PROGRAM ACT"

This program may be a part of each circuit solicitor's Pretrial Intervention Program; it is a matter of prosecutorial discretion whether or not to establish such a program. The South Carolina Commission on Prosecution Coordination shall oversee administrative procedures for the alcohol education programs in consultation with the Department of Alcohol and Other Drug Abuse Services. Alcohol education programs must include an educational and community service component. A violator of specified alcohol-related offenses (not including driving under the influence or driving with an unlawful alcohol concentration offenses) is eligible for this program if the offender is at least seventeen but less than twenty-one with no prior alcohol-related offenses or significant history of prior delinquency or criminal activity. A person may only participate in the program once. There is a \$250 dollar fee for enrollment in the program, but the fee may be waived upon a finding of an inability to pay. If a person violates conditions of participation, the person may be terminated from the program and the alcohol-related offense reinstated. When a person successfully completes an alcohol education program, the circuit solicitor shall effect a noncriminal disposition and there must be no record maintained of the alcohol-related offense except by the Commission on Prosecution Coordination in order to ensure that a person does not benefit from an alcohol education program more than once.

STATUS: H.3490 was enrolled for ratification on May 24, 2007.

"ATM SAFETY ACT"

As passed by the House of Representatives, the bill provides that it is unlawful for a person to steal money, securities for money, or property, either by force, intimidation, or threats, from a person who is using or who has just finished using a bank night depository, an automated teller machine (ATM), or another automated banking device, or in the vicinity of a bank depository, an ATM, or another automated banking device. A violator is guilty of a felony and, upon conviction, must be fined not more than \$10,000 dollars and imprisoned not more than 20 years, or both. The legislation also provides that it is unlawful for a person to beg, panhandle, or solicit money from a person using or who has just finished using a bank night depository, an ATM, or another automated banking device; or in the vicinity of a bank night depository, an ATM, or another automated banking device. A violator is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 dollars or imprisoned not more than 30 days, or both. The legislation provides that separate location code, premise code, or designation for a bank night depository, an ATM, or other automated banking device offense must be added to the South Carolina Incident Based Reporting System and used by law enforcement personnel when completing incident reports for criminal activity encompassed by this legislation.

STATUS: H.3199 passed the House on February 13, 2007. The Senate returned the bill to the House of Representatives with amendments on April 3, 2007. Subsequently, the House of Representatives did not concur in Senate amendments and a conference

Legislative Update, May 29, 2007
Major Issues #3

committee was appointed to address the differences of the bodies on the legislation. The Senate version includes increased penalties for a third conviction, while the House of Representatives version does not.

"CRIMINAL GANG PREVENTION ACT"

As passed by the Senate, this comprehensive legislation addresses the problem of gangs. Among other things, the bill adds criminal gang activities under the jurisdiction of the State Grand Jury. The stated intent of this bill is to eradicate the terror created by criminal gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal gang activity, including criminal gang recruitment.

*STATUS: **S.141** was passed by the Senate on March 2, 2007. The bill was introduced in the House of Representatives and referred to the House Judiciary Committee on March 6, 2007. The bill received a favorable with amendment report from the House Judiciary Committee on May 24, 2007.*

DEFINITION OF THE TERM 'PERSON' FOR PURPOSES OF A CIVIL CAUSE OF ACTION

For purposes of a civil cause of action, as passed by the House of Representatives, this bill provides that the term "person" includes an unborn child. The term "unborn child" means a child in utero with certain exceptions.

*STATUS: **H.3019** passed the House of Representatives on March 27, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 28, 2007.*

DRIVING UNDER THE INFLUENCE LAW REVISIONS

The House of Representatives approved and sent to the sent **H.3496**, a bill that makes comprehensive changes to driving under the influence (DUI) laws. Highlights of the legislation include the following.

The core changes to the law in are in Section 56-5-2930 – creating various tiered punishments (in ascending order) for each of the following designations: “driving while impaired,” “driving with an unlawful alcohol concentration,” “operating a motor vehicle with an unlawful and high concentration,” and “operating a motor vehicle with an unlawful and gross concentration.”

The bill changes “probable cause” to only needing “reasonable suspicion” to order alcohol testing on a person under 21 and if a person under 21 refuses to take the breath test, his license is suspended for one year instead of the current six months; however, if a person under 21 takes the breath test and is over .02, his license is suspended for six

Legislative Update, May 29, 2007
Major Issues #3

months (currently three). The one year and six month penalties are substituted for the current lesser or greater penalty for previous convictions.

The bill eliminates the need to videotape a suspect twenty minutes prior to testing and the person must be given a written copy and informed of his right not to take the breath test and the consequences for such (the penalties are increased for refusal - one year and if over a certain limit to six months).

In certain places deletes "restricted" from "temporary alcohol" license.

Removes the time allowance of a written order within 30 days after a hearing.

The bill provides that a person convicted under this section must enroll in and complete an Alcohol/Drug Safety Action Program (ADSAP) certified by the Department of Alcohol and Other Drug Abuse Services (DAODAS).

The bill provides that any offense under 56-5-2930 carrying a penalty of 90 days or less may be tried in magistrate's court.

In section 56-5-2934 removes certain notice requirements by the officer.

Section 56-5-2942 makes clarification regarding the immobilization of vehicles. The bill amends Section 56-2-2945(A) to make the appropriate technical changes regarding the definition of a driver and clarifying the definition of felony driving while impaired - that a person who is convicted of felony DUI involving death is to have his license suspended for his period of incarceration plus 5 years. Furthermore, a person who is convicted of felony DUI involving great bodily injury is to have his license suspended for his period of incarceration plus 3 years.

The bill amends Section 56-5-2950 and 2951 to make numerous changes, among which are: changing the blood alcohol limit triggering suspension of the person's license from fifteen one hundredths to eight one hundredths of one percent.

The Code is amended by adding that an insurer may not cancel the automobile insurance policy of a person charged with a DUI violation.

The bill provides that only a Miranda warning at the time of arrest must now be video recorded.

The bill now requires that records of the Data Master malfunctions to be electronically recorded into the device and then made available on State Law Enforcement Division's website.

The bill amends Section 1-23-600(B) by adding that the standard of proof in a contested case is "preponderance of the evidence."

The bill as amended changes Section 1-23-660 by removing the requirement for the Administrative Law Court (ALC) to hire a law clerk or other assistant to help the judges who preside over Department of Motor Vehicle (DMV) Hearings. The amendment further makes it unnecessary for the DMV to provide locations within its facilities for hearings, and it removes language in the statute indicating that the chief judge of the

Legislative Update, May 29, 2007
Major Issues #3

ALC is not disqualified from adjudicating cases under this section. The bill further provides that administrative law judges (ALJs) are bound by the Code of Judicial Conduct and the SC Appellate Court Rules. The amendment adds that the State Ethics Commission is responsible for the enforcing the rules. Additionally, the amendment provides that an ALJ, hearing officer, or the spouse of the ALJ or hearing officer may accept invitations to attend judicial-related or bar-related functions.

The amendment adopts the language of **S.472** - providing that the court must order subsequent offenders' vehicles be equipped with an ignition interlock device. The cost of the device must be borne by the offender. The Department of Probation, Parole and Pardon Services (DPPS) would be handling all of the dealings with ignition interlock devices. Substantial language is included regarding the interlock devices.

The bill now provides that for a first offense, the court must be notified if an offender fails to enroll in an ADSAP program within 30 days or fails to participate in the treatment program. The bill further provides that the court may hold the offender in contempt of court if he cannot show good cause as to why the failure to enroll or participate has occurred.

A court may order the use of a continuous alcohol-monitoring device for a person who has been convicted of a second or subsequent offense of 56-5-2930 and for a person who has been convicted of a felony DUI or a DUI involving great bodily injury. The devices will be monitored by DPPS.

A DUI offender is required to carry minimum liability insurance with limits of \$100,000/\$300,000.

The bill amends Section 56-1-10 to include mopeds within the definition of a motor vehicle.

*STATUS: **H 3496** was read for the third time in the House of Representatives on May 17, 2007. On May 22, 2007, the bill was introduced in the Senate and referred to the Senate Judiciary Committee.*

HONORING OF VALID OUT-OF-STATE CONCEALABLE WEAPONS PERMITS

As passed by the House of Representatives, **H.3212** requires that valid out-of-state permits to carry concealable weapons held by a resident of another state be honored by South Carolina. The legislation eliminates the current provision that South Carolina honors only out-of-state permits issued by a state with which South Carolina has reciprocity.

*STATUS: **H.3212** passed the House of Representatives on March 2, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 6, 2007. On May 9, 2007, the bill received a majority favorable, minority unfavorable recommendation from the Senate Judiciary Committee. The bill is pending on the Senate Calendar.*

"JUDICIAL ENHANCEMENT ACT"

This legislation makes comprehensive revisions to the judicial process. Highlights of the revisions include:

- Provides each county clerk of court will report certain information to court administration regarding indictments;
- Provides a procedure for the assignment of a single circuit court judge to complex civil actions;
- Provides factors for the family court to consider when determining attorney's fees;
- Relating to the schedule of fees and costs to be collected by magistrates, increases the fee in all civil actions, for issuing a summons and copy for the defendant, and for filing judgment with or without a hearing from forty-five dollars to one hundred twenty dollars;
- Relating to post-conviction relief procedures, revises the procedure for judicial review of post-conviction relief filings to include the issuance of a certificate of probable cause;
- Relating to the civil jurisdiction of magistrates courts, increases the civil jurisdiction from \$7,500 dollars to \$15,000 dollars;
- Relating to transfer of certain cases from general sessions court to magistrates court, deletes the existing provisions and provides that a case may be transferred to magistrates court if the penalty for the crime does not exceed one year or is a crime classified as a misdemeanor;
- Relating to sentencing, the bill allows the court to correct within seven days of sentencing, a sentence that resulted from arithmetical, technical, or other clear error. Also upon motion of the State, the bill allows for the reduction of a defendant's sentence under certain circumstances.
- Creates a Judicial Circuit Reapportionment Study Committee.

*STATUS: **H.3934** received third reading in the House of Representatives on May 23, 2007; the bill was introduced in the Senate and referred to the Senate Judiciary Committee on May 24, 2007.*

JUDICIAL MERIT SELECTION

As passed by the House of Representatives, [**H.3463**](#) changes the Judicial Merit Selection Commission's process for nominating judicial candidates from the nomination of three candidates to the release of a list of all qualified and fit candidates to the General Assembly. The bill deletes the requirement that the commission consider race, gender, national origin, and other demographic factors. The bill provides that a member

Legislative Update, May 29, 2007
Major Issues #3

of a legislator's immediate family may not be elected to a judicial office while the legislator is serving in the General Assembly or for one year after the legislator leaves office. The bill defines the term "immediate family member" as an individual who is: (1) a child residing in the person's household; (2) a spouse of the person; or (3) claimed by the person or the person's spouse as a dependent for income tax purposes.

*STATUS: **H.3463** passed the House of Representatives on May 1, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on May 2, 2007. On May 7, 2007, the bill was referred to a subcommittee.*

"PREVENTION OF UNDERAGE DRINKING AND ACCESS TO ALCOHOL ACT OF 2007"

As passed by the Senate, this comprehensive legislation addresses the problem of underage drinking and access to alcohol. Among other things, the legislation:

- Requires the registration of kegs;
- Creates the offense of illegal purchase of alcoholic liquors for another's consumption on premises;
- Requires that criminal charges be brought against both the seller and purchaser regarding the illegal sale of alcoholic liquors and beverages to minors;
- Provides an exception for the use of minors by law enforcement under certain circumstances;
- Equalizes the penalties for the purchase or possession of beer, wine and alcoholic liquors by minors;
- Requires completion of certain alcohol prevention education or intervention programs under certain circumstances; and
- Increases penalties for various violations.

*STATUS: **S.213** passed the Senate on March 13, 2007. The bill was introduced in the House of Representatives and referred to the House Judiciary Committee on March 14, 2007. The bill received a favorable with amendment report from the House Judiciary Committee on May 24, 2007.*

"TRAFFIC EDUCATION PROGRAM ACT"

As passed by the House of Representatives, [**H.3572**](#) provides that each circuit solicitor has the authority to establish as part of the Pretrial Intervention Program a traffic education program for persons who commit traffic-related offenses that are punishable only by a fine and loss of four points or less. The program must include both a community service and an educational component. A person may be considered for a traffic education program only if he has no prior traffic-related offenses on his record, and a person may not participate in a traffic education program more than once. When a person successfully completes a traffic education program, the governmental agency administering the program shall effect a noncriminal disposition of the traffic-related offense, and there must be no record maintained of the traffic-related offense except by

Legislative Update, May 29, 2007
Major Issues #3

the appropriate traffic education program in order to ensure that a person does not benefit from a traffic education program more than once. If a person violates the conditions of a traffic education program or receives a subsequent traffic violation during the six months following the issuance of the ticket for which he has entered the traffic education program, he must be terminated from the program and the traffic-related offense must be reinstated.

Administration

Each circuit solicitor may establish an Office of Traffic Education Program Coordinator whose responsibility is to assist in the establishment and maintenance of the traffic education program. A traffic education program must be under the direct supervision and control of the circuit solicitor; however, the solicitor may contract for services with a county or municipality in the circuit. The South Carolina Commission on Prosecution Coordination shall oversee administrative procedures for the traffic education programs.

Fees

A person shall pay a nonrefundable \$140 fee to apply for a traffic education program that cannot be reduced or suspended. Additionally, a person shall pay a nonrefundable fee, not to exceed \$140 dollars to participate in a traffic education program. Participation in a traffic education program may not be denied due to a person's inability to pay. If a person is deemed unable to pay, both the application fee and the participation fee must be waived.

For offenses that would have been otherwise tried in magistrates court, the governmental agency administering the program shall retain the participation fee to support the traffic education program. The application fees must be remitted to the county treasurer. The county treasurer shall remit 9.17 percent of the revenue from the application fees to the county to be used for providing required services for crime victims (Section 14-1-207(D)) and remit the balance of the revenue from the application fees to the State Treasurer's Office on a monthly basis, by the fifteenth day of each month, and make reports on a form and in a manner prescribed by the State Treasurer. Fees paid in installments must be remitted as received. The State Treasurer shall deposit the amounts received as follows:

- (1) 23.62 percent to the Department of Probation, Parole and Pardon Services;
- (2) 15.12 percent to the Department of Public Safety;
- (3) .44 percent to the Department of Public Safety's South Carolina Law Enforcement Officers Hall of Fame;
- (4) 13.73 percent to the State Office of Victim Assistance;
- (5) 6.01 percent to the General Fund;
- (6) 10.97 percent to the Commission on Indigent Defense;
- (7) 1.34 percent to the Attorney General's Office;
- (8) .90 percent to the Department of Juvenile Justice Arbitration Program;
- (9) .81 percent to the Department of Juvenile Justice Marine Institutes;
- (10) .90 percent to the Department of Juvenile Justice Regional Status Offender Program;
- (11) 3.95 percent to the Department of Juvenile Justice Coastal Evaluation Center;
- (12) 6.74 percent to the Circuit Solicitors;
- (13) 2.68 percent to the State Law Enforcement Division;
- (14) 2.68 percent to the Department of Corrections;
- (15) .67 percent to the Judicial Department;

Legislative Update, May 29, 2007
Major Issues #3

- (16) .28 percent to the Department of Natural Resources; and
- (17) .02 percent to the Forestry Commission.

For offenses that would have been otherwise tried in municipal court, the governmental agency administering the program shall retain the participation fees to support the traffic education program. The application fees must be remitted to the city treasurer. The city treasurer shall remit 9.17 percent of the revenue from the application fees to the municipality to be used for providing required services for crime victims (Section 14-1-208(D)) and remit the balance of the revenues from the application fees to the State Treasurer's Office on a monthly basis, by the fifteenth day of each month, and make reports on a form and in a manner prescribed by the State Treasurer. Fees paid in installments must be remitted as received. The State Treasurer must deposit the amounts received as follows:

- (1) 10.25 percent to the Department of Probation, Parole and Pardon Services;
- (2) 10.13 percent to the Department of Public Safety;
- (3) .26 percent to the Department of Public Safety's South Carolina Law Enforcement Officer's Hall of Fame;
- (4) 7.57 percent to the State Office of Victim Assistance;
- (5) 2.77 percent to the General Fund;
- (6) 11.02 percent to the Commission on Indigent Defense;
- (7) 1.07 percent to the Attorney General's Office;
- (8) .65 percent to the Department of Mental Health;
- (9) 7.64 percent to be used by SLED to equip all breath test sites with videotaping devices and supplies (Section 56-5-2953(E));
- (10) 9.93 percent to the Governor's Task Force on Litter;
- (11) 9.93 percent to the Department of Juvenile Justice;
- (12) .90 percent to the Department of Juvenile Justice Arbitration Program;
- (13) .81 percent to the Department of Juvenile Justice Marine Institutes;
- (14) .90 percent to the Department of Juvenile Justice Regional Status Offender Program;
- (15) 3.95 percent to the Department of Juvenile Justice Coastal Evaluation Center;
- (16) 6.74 percent to the Circuit Solicitors;
- (17) 2.68 percent to the State Law Enforcement Division;
- (18) 2.68 percent to the Department of Corrections;
- (19) .67 percent to the Judicial Department;
- (20) .28 percent to the Department of Natural Resources; and
- (21) .02 percent to the Forestry Commission.

Reporting Requirements

Each governmental agency that administers a traffic education program is required to submit a traffic education program annual report, by the first day of August, to the Commission on Prosecution Coordination providing the total number of participants by original traffic-related offenses, the total number of participants that successfully completed the traffic education program, the total amount of fees collected, and the total revenue remitted to the municipalities, counties, and State Treasurer's Office for the state's fiscal year.

Each governmental agency that administers a traffic education program is also required to submit to the Commission on Prosecution Coordination necessary identifying

information on each participant for the creation and maintenance of a list for determining eligibility for a traffic education program.

*STATUS: **H.3572** passed the House of Representatives on May 3, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on May 3, 2007. On May 7, 2007, the bill was referred to a subcommittee.*

EDUCATION

"AMERICAN BOARD FOR THE CERTIFICATION OF TEACHER EXCELLENCE ACT"

As passed by the House of Representatives, [**H.3476**](#) creates an alternative method for individuals to become certified to teach in South Carolina. The bill allows school districts to hire individuals that have received a Passport certificate issued by the American Board for the Certification of Teacher Excellence (ABCTE) in the content areas of biology, chemistry, English, math, physics or science. Additional areas may be approved by the State Department of Education (SDE). To obtain an alternative route certificate a person must have a Passport certificate issued by ABCTE and a bachelor's degree. An alternative route certificate is valid for one year and may be renewed for two additional years upon successful completion of teaching and of the hiring district's induction program. As a condition of professional certification, an individual with an alternate route certificate must successfully complete the South Carolina adopted pedagogy examination. A person who has received a Passport certificate and is hired by a school district has the same responsibilities and rights as other teachers. Also, these individuals are required to submit to FBI and SLED criminal background checks. The bill requires the SDE to report to the State Board of Education and the General Assembly certain data and information regarding individuals employed in South Carolina with a Passport certificate issued by ABCTE.

*STATUS: March 21, 2007, **H.3476** passed the House of Representatives and was introduced in the Senate. On May 3, 2007, the bill received a favorable with amendment report from the Senate Education Committee. The bill is pending on the Senate Calendar.*

ORIENTATION CLASSES FOR SCHOOLS THAT HAVE RECEIVED AN UNSATISFACTORY ABSOLUTE ACADEMIC PERFORMANCE RATING

As passed by the House of Representatives, [**H.3254**](#) requires orientation classes for schools that have received an unsatisfactory absolute academic performance rating. Any year a school receives an unsatisfactory absolute academic performance rating, this bill provides that the school shall offer an orientation class for parents, focusing on: the value of education; academic assistance programs that are available at the school and in the community; student discipline; school policies; and other pertinent issues.

Legislative Update, May 29, 2007
Major Issues #3

Schools shall provide parents with written notification of the date and time of the meeting. Schools are encouraged to avoid transportation or scheduling difficulties for parents by offering the class at a convenient time and location. A parent or guardian of each student registered to attend the school shall attend the orientation class each year it is offered.

*STATUS: **H.3254** passed the House of Representatives and was introduced in the Senate on April 25, 2007. The bill has been referred to the Senate Education Committee where it received a favorable recommendation on May 17, 2007. The bill is now pending on the Senate calendar.*

SCHOLARSHIP ENHANCEMENTS FOR STUDENTS MAJORING IN SCIENCE OR MATHEMATICS

The House of Representatives approved and sent to the Senate **H.3170**, a bill providing scholarship enhancements for students majoring in science or mathematics. This bill provides that a resident student who is at least a sophomore attending a public or private institution in this state, majoring in science or mathematics, and receiving a Palmetto Fellows Scholarship or LIFE Scholarship shall receive an additional scholarship stipend for the remainder of his undergraduate term if he continues to be eligible for the scholarship and demonstrates acceptable progress towards receiving an undergraduate degree in science or mathematics. The total increase each year is not to exceed \$3,300 for Palmetto Fellows and \$2,500 for LIFE. The legislation provides that the amount of the Palmetto Fellows Scholarship for recipients who do not receive this enhanced stipend beginning with the 2007 academic year shall be increased to an amount equal to that received by a LIFE scholarship recipient also receiving the enhanced stipend. The legislation increases from \$150 to \$300 the book allowance for HOPE Scholarship recipients and allows a science or mathematics major receiving a HOPE Scholarship in his freshman year to continue to receive the scholarship and book allowance for his sophomore year. The legislation establishes minimum course requirements that must be met during the freshman year in order for a student to be eligible for these enhancements. Credits earned through applicable high school advanced placement courses may count towards satisfying these freshman year requirements. The Commission on Higher Education shall define by regulation what constitutes a science or mathematics major but the category at minimum shall include majors in science or mathematics disciplines, computer science or informational technology, engineering, science education, math education, and health care and related disciplines including medicine and dentistry

*STATUS: The House of Representatives approved **H.3170** on February 15, 2007, and sent the bill to the Senate. On May 23, 2007, the bill received a favorable with amendment report from the Senate Education Committee. The bill is pending on the Senate calendar.*

SCHOLARSHIP LOANS FOR STUDENTS MAJORING IN SCIENCE, MATHEMATICS, OR EDUCATION

The Senate approved and sent to the House of Representatives **S.291**, which provides that a resident student who has completed at least 60 credit hours and is attending a four-year public or private institution in this state, majoring in science or mathematics or education, and receiving a Palmetto Fellows Scholarship or LIFE Scholarship shall receive an additional loan. The legislation provides for how a loan recipient who obtains at least a qualifying degree may have the loan plus interest

Legislative Update, May 29, 2007
Major Issues #3

canceled by being employed in South Carolina. Both loan programs are administered by the South Carolina Student Loan Corporation.

*STATUS: The Senate approved **S.291** on March 13, 2007, and sent the bill to the House of Representatives where it has been referred to the Education and Public Works Committee.*

SCHOOL BUS BILL

H.3161 is a bill revising provisions for school buses. Highlights of the legislation, as passed by the House of Representatives, include the following:

- With certain exceptions, this bill provides that a student may not ride continuously on a school bus for more than 90 minutes.
- The State Department of Education (SDE) is required to annually review bus routes to ensure efficiency and that buses are only operated on safe roads.
- Only a person who has been certified by the SDE may drive a public school bus. The bill provides for two types of School Bus Driver Certificates.
- The bill also requires drivers of vehicles using certain traffic control devices to receive training.
- The bill provides for parental responsibility at bus stops.
- With regard to seating spaces on buses, this bill provides that the number of students assigned to a school bus must not be greater than the manufacturer certified seating capacity; the bill does provide for limited exceptions.
- All publicly owned school buses must be inspected annually in compliance with the SDE annual school bus program. Certain privately owned buses must be inspected annually in compliance with applicable federal inspection requirements. The owner or leasee of a school bus shall be solely responsible for the implementation and accountability of school bus inspections.
- All school buses are subject to inspection by the State Transport Police. A school bus may not continue to operate if the annual inspection is more than twelve months old. School buses may not operate until any unsafe conditions disclosed by the inspection are corrected.
- The State may assume the obligation of providing transportation services extending within three-tenths of a mile walking distance of the residence of any student where hazardous traffic conditions are involved provided funds are appropriated annually by the General Assembly for this purpose. In these cases, the local school district must apply in writing to SDE for the State to assume the financial responsibility for this transportation from funds appropriated annually by the General Assembly for this purpose. If funds are

Legislative Update, May 29, 2007
Major Issues #3

not appropriated annually by the General Assembly, then neither the State nor a local school district is required to assume this obligation. The bill lists some factors considered pertinent to determining hazardous traffic conditions.

- The bill references and defines the term unescorted student. School transportation for eligible unescorted students in Child Development through second grade provided funds are appropriated annually by the General Assembly for this purpose. Services will be provided as closely and safely as practicable to the residence. Eligible unescorted students in the third through fifth grades will be provided school transportation services to and from school to within two tenths of a mile provided funds are appropriated by the General Assembly for this purpose. If funds are not appropriated by the General Assembly, then neither the State nor a local school district is required to assume this obligation.
- The SDE is required to implement a school bus replacement cycle to replace approximately one-fifteenth of the fleet each year.
- A grant program is established to fund transportation of students to alternate public schools (magnet schools, Montessori schools, etc.). School districts having alternative public schools may apply for grant funds to pay for the additional cost of transporting students to these schools. Accomplished with funds appropriated by the General Assembly.
- SDE, when feasible, shall utilize biodiesel fuel.
- The legislation also provides state-owned school buses must be parked overnight and during the school day in a location that is central to the area in which the school buses are operated. The SDE may grant waivers.

STATUS: **H.3161** was enrolled for ratification on May 23, 2007.

“SOUTH CAROLINA NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM ACT”

The General Assembly approved **S.322**, a bill that revises provisions for the South Carolina National Guard Tuition Assistance Act, so as to enact instead the “South Carolina National Guard College Assistance Program Act” which provides for college assistance program grants administered by the Commission on Higher Education. Qualifying members of the South Carolina Army or Air National Guard may receive college assistance program grants up to an amount equal to one hundred percent of college tuition and fees. The total of all grants received may not, however, exceed eighteen thousand dollars. A member may not qualify for college assistance program grants for more than one hundred thirty semester hours or related quarter hours, and grants are not to be awarded for graduate degree courses. The legislation provides for eligibility requirements. The legislation discontinues the loan repayment program for members of the National Guard serving in areas of critical need and eliminates provisions for one-half tuition for members of the South Carolina National Guard.

*STATUS: Having passed the Senate and the House of Representatives, **S.322** was enrolled for ratification on May 22, 2007.*

SOUTH CAROLINA PUBLIC SCHOOL CHOICE PROGRAM

H.3124 is a bill providing for South Carolina public school choice programs. Highlights of the legislation include:

Requirements For School Year 2007-08

The State Department of Education (the Department) establishes the Office of School Choice and Innovation (the Office) to provide districts with public school choice and open enrollment program information and assistance. The Office will: (1) conduct a statewide inventory on district growth projections, choice programs available, and choice options parents would like to have; (2) establish and assist district choice and open enrollment pilot programs where district participation is voluntary; and (3) provide information and recommendations to districts regarding problems experienced in pilot programs and the costs of implementation. Each district convenes a School Choice Committee to develop an action plan. The State Board develops guidelines listing factors to be used in determining school capacity. In developing the guidelines, a task force will be established with membership to include, but not be limited to, school board members, superintendents, principals, parents, and business and community leaders. The membership of the task force shall reflect urban and rural areas of the State.

Requirements For School Year 2008-09

Districts begin implementing school choice plans, providing at a minimum a choice option for elementary, middle, and high school students. The School Choice Committee and district develop plans to implement an Open Enrollment Choice Program. The Department reports to the General Assembly by January 1, 2009, regarding findings from pilot programs.

Requirements For School Year 2009-10

A parent may enroll his child in a public school in any district without paying tuition, and all districts must participate. Assignment of students is based on capacity of receiving school.

The receiving district shall: (1) notify resident district of receipt of application; (2) take action by the last day of February of the school year preceding enrollment to approve or deny an application; and (3) notify the parent and the resident district within five days after board action, with a written explanation if the application is denied. Students residing in a school attendance zone may not be displaced by a student outside the attendance zone. School districts are not required to: (1) accept students outside of the district in excess of 3% of district's highest average daily membership in any year over the preceding ten year period; (2) alter the structure of a requested school; (3) establish and offer in a school a program not currently offered; or (4) alter or waive eligibility criteria for a program.

School boards will adopt policies for capacity standards, standards of approval, and priorities of acceptance. Standards for capacity may not be set less than 75% of those established in State Board regulations. Only permanent building structures are, however, allowed in the calculation of capacity. Applications must be considered in order received, but for assignment of students priority must be: (1) students residing in district who desire to attend a school outside their attendance zone; (2) returning students; (3) students who seek to attend the designated school in the district's feeder pattern; (4) siblings of students already enrolled in the school; and (5) students whose parent or guardian is employed by the school. Receiving districts may deny students only if: (1) there is lack of capacity in district, school, or program requested; (2) the school requested cannot meet the special needs of a student; (3) student does not meet eligibility criteria for participation in a particular program; (4) denial is necessary to comply with a desegregation plan; or (5) the student is expelled or in the process of being expelled. Sending districts may deny resident students a transfer only if the transfer would violate a desegregation plan. Denials by receiving district are subject to appeal to the State Board of Education.

Districts must annually submit capacity figures for all district schools to the Department and must post these figures, current enrollment, and school's current percentage of capacity on district and school websites. A student enrolled in a nonresident district may remain without reapplying until completion of the final grade within that school. Receiving districts may terminate enrollment of nonresident students for habitual truancy, attendance policy violation, violations of student conduct code, or by mutual agreement between board of receiving and resident district and parents. Parents are responsible for transportation, but parents with family income of 185% or less of federal poverty guidelines are eligible for transportation services provided by the district or for

Legislative Update, May 29, 2007
Major Issues #3

transportation reimbursement paid to the parent by the district (district would be reimbursed by the Department).

Districts receive 100% of base student cost for nonresident students.

Students enrolled in a receiving district are ineligible for interscholastic athletics participation for one calendar year after enrollment or, if student makes subsequent transfers, for one calendar year from date of each transfer. This restriction does not apply to a student's initial transfer, if student's district of residence does not offer the sport in which the student wishes to participate.

Department must annually survey districts to determine the number of students participating in the program and report to the General Assembly. Each year of implementation of the program is contingent upon appropriation of adequate State funding.

*STATUS: **H.3124** passed the House of Representatives April 11, 2007. On April 24, 2007, the bill received a favorable with amendment report from the Senate Education Committee. The Senate's debate on this bill was interrupted on May 24, 2007.*

SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM

H.3097 establishes the South Carolina Virtual School Program to make use of computer technology in order to expand the educational opportunities that are available students. The program is designed to offer instruction through the Internet in order to: resolve scheduling conflicts; offer a more flexible, individualized pace of instruction; provide effective alternatives for meeting graduation requirements or credit recovery; and allow students to take courses that may not be offered at their schools due to insufficient demand or a lack of certified personnel.

The State Board of Education is authorized to establish the South Carolina Virtual School Program to provide South Carolina students access to distance, online, or virtual learning courses offered for an initial unit of credit. Additionally, the South Carolina Virtual School Program shall offer access to credit recovery programs for students who have been identified by a school district as not having received credit for a course previously taken or for students who have been identified by a school district as not likely to receive credit for a course in which the student is currently enrolled.

Students may enroll in courses for credit recovery based on policies established by the State Board of Education. A public, private, or homeschool student residing in South Carolina who is twenty-one years of age or younger shall be eligible to enroll in the South Carolina Virtual School Program. A private school or home school student enrolled in the program must not be entitled to any rights, privileges, courses, activities, or services available to a public school student other than receiving an appropriate unit of credit for a completed course. Students may be awarded a maximum of three online initial credits in a school year, and no more than twelve online initial credits throughout high school. However, the State Board of Education shall establish an appeals process whereby the governing body of the student's school district may grant a waiver to exceed the established limit.

Legislative Update, May 29, 2007
Major Issues #3

H.3097 provides that the South Carolina Virtual School Program shall be housed in and managed by the State Department of Education. All distance, online, or virtual learning courses offered for a unit of credit must be aligned with the state adopted academic standards, include appropriate course materials, and be approved by the Department. Instructors must hold a valid teaching certificate in each content area being taught or receive approval from the State Department of Education to teach the course. All virtual schoolteachers must receive appropriate preservice and in-service training pertaining to the organization, classroom management, technical aspects, monitoring of student assessment, and other pertinent training from the Department.

The State Board of Education shall develop guidelines and promulgate regulations on such matters as: (1) procedures and criteria for the selection of online courses; (2) qualifications and registration requirements of students who may enroll in online courses to include provisions outlining the enrollment of students that have been expelled from school; (3) procedures for private and homeschool students to enroll in courses; (4) teacher qualifications and the student-to-teacher ratio for online courses; (5) appropriateness and provisions for charging tuition and fees; (6) procedures for establishing uniform evaluation of student progress and awarding of final grades; (7) process for maintaining student records and reporting and recording grades on the student's transcript; (8) procedures and requirements for employment, supervision, and evaluation of teachers; (9) procedures and requirements for supervision, monitoring, assessment, and evaluation of enrolled students; and (10) student expectations.

The State Board of Education is required to provide the General Assembly with an annual report on the program. Through the use of an online pilot program, the State Department of Education shall examine the feasibility of providing services of the South Carolina Virtual School Program to students enrolled in adult education programs and shall make recommendations to the General Assembly no later than January 1, 2008.

H.3097 establishes requirements for charter schools that choose to offer a program of online or computer instruction. The legislation provides that a charter school shall provide no more than seventy-five percent of a student's core academic instruction in kindergarten through twelfth grade via an online or computer instruction program. The twenty-five percent of the student's core academic instruction may be met through regular instructional opportunities in real time that are directly related to the school's curricular objectives, such as meetings with teachers and educational field trips and outings. Private or homeschool students choosing to take courses from a virtual charter school may not be provided instructional materials, or any other materials associated with receiving instruction through a program of online or computer instruction at the state's expense. Only students enrolled in the charter school as a full-time student shall be reported in the charter school's average daily membership to the State Department of Education for the purposes of receiving state or federal funds. Private and homeschool students may not be included in the student weighted pupil units or average daily membership reported to the State Department of Education for the purposes of receiving state or federal funds.

STATUS: **H.3097** (R.48) was signed by the Governor May 15, 2007 (Act No. 26).

FAMILY/HEALTH

AGE OF CONSENT AMENDMENT PROPOSED FOR THE STATE CONSTITUTION

The General Assembly approved **S.389**, a joint resolution proposing to amend the South Carolina Constitution by eliminating the provision that no unmarried woman shall legally consent to sexual intercourse who has not have attained the age of fourteen years. The proposed amendment is to be placed on the ballot and submitted to the voters at the next general election.

*STATUS: Having passed both the Senate and the House of Representatives Joint Resolution **S.389** was enrolled for ratification on May 16, 2007.*

AUTISM SPECTRUM DISORDER HEALTH INSURANCE COVERAGE REQUIREMENTS

The Senate and the House of Representatives approved **S.20**, a bill requiring health insurers to provide coverage for treatment of Autism spectrum disorder, which includes Autistic Disorder, Asperger's Syndrome, and other Pervasive Developmental Disorders. The legislation requires health insurers to provide coverage for the treatment of autism spectrum disorder that is limited to treatment prescribed by the insured's treating medical doctor in accordance with a treatment plan. To be eligible for benefits and coverage required by the legislation, an individual must be diagnosed with autistic spectrum disorder at age eight or younger. Benefits and coverage must be provided to any eligible person under sixteen years of age. Coverage for behavioral therapy is limited to a fifty thousand dollar maximum benefit per year. This limit is adjusted annually to reflect changes in the Consumer Price Index. Except for this limitation and other general exclusions and limitations of the health insurance plan, required coverage for treatment of Autism spectrum disorder must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the terms that apply to physical illness generally under the health insurance plan. An insurer may not deny coverage, refuse to renew coverage, or otherwise terminate or restrict coverage on an individual solely because the individual is diagnosed with autism spectrum disorder. The legislation provides an exemption from these autism spectrum disorder coverage requirements for any health insurance plan that is individually underwritten, offered in the individual market, or provided to a small business with no more than fifty employees.

*STATUS: The Senate approved **S.20** on April 27, 2007, and the House of Representatives approved the bill and enrolled it for ratification on May 25.*

COMMON LAW MARRIAGE

Under this bill, common law marriage in the State may not be recognized on and after January 1, 2008; an exception is provided for common law marriages existing as of

Legislative Update, May 29, 2007
Major Issues #3

December 31, 2007. The bill also repeals a code section relating to the validity of a marriage contracted without the issuance of a license.

*STATUS: **H.3427** received third reading in the House of Representatives and was sent to the Senate on March 29, 2007. The bill received a majority favorable with amendment; minority unfavorable report from the Senate Judiciary Committee. The bill is pending on the Senate calendar.*

DANGERS ASSOCIATED WITH SHAKING INFANTS AND YOUNG CHILDREN

This bill requires the Department of Health and Environmental Control (DHEC) to approve and make available a video on the dangers associated with shaking infants and young children. DHEC must make the video available at cost to every hospital, licensed childcare facility, and the Department of Social Services must make the video available to all parents that adopt a child through agency. DHEC must establish a protocol for health care providers to educate parents and primary caregivers about the dangers of shaking infants and young children. DHEC is instructed to request family practice and pediatric health care providers to review these dangers with parents and primary caregivers of children up to age one at each well-child visit. Every hospital must make an approved video available and request both parents of every newborn baby to view it. Following the hospital's request, the parents are to sign a document stating they have been offered an opportunity to watch the video. Also, the video presentation must be part of the initial and ongoing training of licensed childcare providers. The bill provides that there will be no civil, criminal or administrative cause of action or other liability against a health care facility or health care provider for any acts or omissions relating to compliance with the provisions of the act.

*STATUS: **S.518** was enrolled for ratification on May 24, 2007.*

ORGAN AND TISSUE DONOR PROGRAM ESTABLISHED IN THE DEPARTMENT OF CORRECTIONS

This legislation establishes an organ and tissue donor program within the Department of Corrections. The purpose of the program is to educate prisoners about the need for organ and tissue donors, the procedures required to become a registered organ donor, and, in the case of bone marrow donors, the procedures for determining the person's tissue type and the medical procedures a donor must undergo to donate bone marrow. The Medical University of South Carolina and the University of South Carolina, School of Medicine, in conjunction with the Department of Corrections, must make available to prisoners educational pamphlets and brochures concerning bone marrow donation and the bone marrow donation programs operating in this State. However, if the department determines that a prisoner's participation in the program would constitute a threat to security, then the department may prohibit the prisoner from participating. All organ or tissue donations, including bone marrow donations, must be made on a voluntary basis.

*STATUS: **S.481** was enrolled for ratification on May 23, 2007.*

PREREQUISITES FOR THE PERFORMANCE OF AN ABORTION

As originally passed by the House of Representatives, **H.3355** requires that the physician who is to perform the abortion must verify the probable gestational age of the embryo or fetus by using an obstetric ultrasound. The images used to verify the probable gestational age must be reviewed with the woman seeking the abortion, and the woman seeking the abortion must certify in writing before the abortion is performed that she has reviewed the ultrasound images.

*STATUS: **H.3355** passed the House of Representatives on March 22, 2007. The Senate amended the bill and returned it to the House of Representatives on May 17, 2007. The Senate amendment establishes the viewing of the ultrasound image as a right that the mother has and that she must be notified of the option to view the ultrasound image.*

The House of Representatives returned the bill to the Senate with amendments on May 24, 2007. As returned to the Senate, the bill provides that the probable gestational age of the embryo or fetus be verified by an ultrasound at least one hour before the abortion is to be performed. Further, the images used to verify the probable gestational age must be reproduced and reviewed with the mother prior to the woman giving informed consent to having an abortion procedure performed. Nothing may be construed to require the woman to view the ultrasound image against her will. Neither the physician nor the woman shall be penalized if the woman refuses to view the ultrasound image.

“SOUTH CAROLINA CRITICAL NEEDS NURSING INITIATIVE ACT”

Created under the Commission on Higher Education (CHE), **S.657** provides incentives to retain nurse faculty scholars, attract new nurse faculty, provide loans, grants, and scholarships to in-state resident nursing students, establish a research office to predict health care workforce needs, and provide technology to increase accessibility to clinical education needs.

The legislation establishes a Critical Needs Nursing Initiative Fund and sets a recommended priority order for the use of funds: (1) faculty salary enhancements; (2) new faculty; (3) student scholarship, loan, and grant programs; (4) establishment of the Office for Health Care Workforce Research; and (5) use of simulation technology and equipment.

The legislation caps the faculty salary enhancements at six million dollars. Faculty salary enhancements are intended to bring salaries for nursing faculty within the average for the geographic area in which the State of South Carolina competes for nursing faculty. The CHE upon consultation an advisory committee determines and distributes funds.

The Critical Needs Nursing Initiative Scholarship, Loan, and Grant Program is established to provide incentives and stipends to enable candidates seeking a higher degree to become qualified to teach full-time at an accredited nursing program at the

Legislative Update, May 29, 2007
Major Issues #3

public institutions of higher learning. The General Assembly sets a recommended priority order of varying amounts and numbers of scholarships, loans and grants: for students enrolled in Masters in Nursing graduate programs, doctoral education students enrolled in nursing or a related field that would prepare the person to teach in a nursing program; and, students pursuing a Bachelor of Science in Nursing from an accredited nursing program, including those students who have graduated from an associate degree program.

Establishes the Office for Health Care Workforce Research within the South Carolina Area Health Education Consortium (SCAHEC). The purpose of the Office for Health Care Workforce Research is to analyze workforce supply and demand data and predict the need for registered nurses. The Office for Health Care Workforce Research shall collaborate with the Office of Research and Statistics of the Budget and Control Board, the South Carolina Center for Nursing Leadership, health professional education programs, professional associations representing the various health profession disciplines, and the health care delivery system to monitor the need for and educational capacity for nurses in South Carolina. The bill also encourages the utilization of simulation technology for new education models at all public institutions of higher learning.

*STATUS: **S.657** was enrolled for ratification on May 24, 2007.*

IMMIGRATION

HOUSE STUDY COMMITTEE TO STUDY THE APPROPRIATE ENFORCEMENT OF FEDERAL AND STATE LAWS RELATING TO THE PRESENCE OF ILLEGAL ALIENS IN THIS STATE

H.3032 creates a House Study Committee to study the appropriate enforcement of federal and state laws relating to the presence of illegal aliens in this State and to recommend legislative changes as appropriate. The bill outlines membership for the twelve-person committee. The Study Committee shall render its report and recommendations to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor no later than January 1, 2008. The Study Committee shall continue to meet after this date, if necessary, in order to make continuing recommendations to the General Assembly regarding the appropriate enforcement of federal and state laws related to the presence of illegal aliens in the State.

*STATUS: **H.3032** passed the House of Representatives on March 2, 2007. The bill was introduced in the Senate and referred to the Senate Judiciary Committee on March 6, 2007. The bill was referred to a subcommittee on March 7, 2007, whereupon the Committee gave favorable report with amendment on May 17, 2007. The Committee amendment is largely the text of **S.392**.*

S.392, which enacts the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," passed the Senate on April 19, 2007. The bill was introduced in the House and

Legislative Update, May 29, 2007
Major Issues #3

referred to the House Judiciary Committee on April 24, 2007. This comprehensive legislation addresses issues surrounding illegal immigration. Areas covered by the legislation include, but are not limited to, the following: Illegal Aliens and Public Employment (verification program for public employers regarding service contracts); Enforcement of Federal Immigration and Customs Laws Memorandum of Understanding (allows state law enforcement officers to become auxiliary immigration enforcement agents); Verification of Lawful Presence in the United States (for those seeking public assistance benefits with numerous exceptions); Recording and Reporting Immigration Law Violations (business and wage restrictions for employment of unauthorized persons, penalties for the termination of US workers for the purpose of hiring illegal aliens, creates state felony for harboring illegal aliens); Verification of Nationality of Prisoners (identification of illegal aliens within the prison population and recoup of costs from the federal government); and Registration of Immigration Assistance Services.

ILLEGAL IMMIGRANTS AND PUBLIC BENEFITS/EDUCATION AND COUNSELING SERVICES FOR FOOD STAMP RECIPIENTS

Illegal Immigrants and Public Benefits

As passed by the House of Representatives, **H.3149** provides that a person may not receive food assistance payments, if the state administers the eligibility process, unless the person verifies that he is lawfully present in South Carolina. Verification includes the execution of an affidavit; false representations in the affidavit are considered perjury. This bill requires such a person to apply for these benefits through the Systematic Alien Verification of Entitlement Program or some other program operated the United States Office of Homeland Security. The provisions of this bill do not apply to an application for recipients under the age of 18. The Department of Social Services must enforce these provisions.

Education and Counseling Services for Food Stamp Recipients

As passed by the House of Representatives, the legislation also requires education and counseling services for food stamp recipients. The Department of Social Services is required to provide education and counseling services for all persons it has determined eligible to receive United States Department of Agriculture food coupons. This education and counseling must include basic information on nutrition requirements and shopping and meal preparation advice designed to assist the recipient in making the best use of the assistance provided in meeting individual and family nutrition requirements.

STATUS: **H.3149** passed the House of Representatives on March 9, 2007. The bill was introduced in the Senate and referred to the Senate General Committee on March 13, 2007.

On March 7, 2007, the Senate passed **S.531**. This is a Senate Resolution to request that the Governor of South Carolina declare by Executive Order that no illegal alien is eligible to receive any services or assistance provided by the Department of Social Services or any other State agency to the extent allowed by law.

"REGISTRATION OF IMMIGRATION ASSISTANCE ACT"

As passed by the House of Representatives, the stated purpose of **H.3025** is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys. The bill limits what immigration assistance a nonlawyer may provide as well as restricts certain activities of these nonlawyers providing immigration assistance for compensation. Exceptions are provided for attorneys and their staff, certain not-for-profit organizations, and other organizations employing or desiring to employ an alien so long as the organization does not seek compensation for the services provided. A person performing immigration assistance services is required to obtain appropriate business licenses; the bill outlines procedures for obtaining and renewing licenses with the Secretary of State. The bill requires nonattorneys to post signs and give notice in advertisements and communications clearly indicating that they are not attorneys or authorized to give legal advice or accept fees for legal services. The bill provides for civil and criminal penalties; additionally, violations are subject to the provisions of the South Carolina Unfair Trade Practices Act.

*STATUS: **H.3025** passed the House of Representatives on March 7, 2007. The bill was introduced in the Senate and referred to the Senate Labor, Commerce and Industry Committee on March 7, 2007.*

S.392, which enacts the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," passed the Senate on April 19, 2007. The bill was introduced in the House and referred to the House Judiciary Committee on April 24, 2007. This comprehensive legislation addresses issues surrounding illegal immigration. Areas covered by the legislation include, but are not limited to, the following: *Illegal Aliens and Public Employment* (verification program for public employers regarding service contracts); *Enforcement of Federal Immigration and Customs Laws Memorandum of Understanding* (allows state law enforcement officers to become auxiliary immigration enforcement agents); *Verification of Lawful Presence in the United States* (for those seeking public assistance benefits with numerous exceptions); *Recording and Reporting Immigration Law Violations* (business and wage restrictions for employment of unauthorized persons, penalties for the termination of US workers for the purpose of hiring illegal aliens, creates state felony for harboring illegal aliens); *Verification of Nationality of Prisoners* (identification of illegal aliens within the prison population and recoup of costs from the federal government); and *Registration of Immigration Assistance Services*.

STATE/LOCAL GOVERNMENT

IMPLEMENTATION OF THE FEDERAL REAL ID ACT

In May 2005, the United States Congress enacted the "REAL ID Act of 2005" (REAL ID Act) as part of Public Law 109-13, a federal supplemental appropriations measure. The REAL ID Act requires states to: (a) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the United States Department of Homeland Security; (b) electronically verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a United States citizen or a lawful alien, a lawful refugee, or a

Legislative Update, May 29, 2007
Major Issues #3

person holding a valid visa; (c) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card; and (d) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards.

H.3989 is a concurrent resolution to memorialize Congress to repeal or decline implementation of the "REAL ID Act of 2005" and to oppose the creation of a federal national identification card.

*STATUS: **H.3989** was adopted by the House of Representatives and sent to the Senate on May 9, 2007. On May 15, 2007 the concurrent resolution was referred to the Senate Judiciary Committee; on May 23, 2007 the concurrent resolution was referred to a subcommittee.*

*On April 3, 2007, the Senate passed and sent to the House **S.449**, which provides that South Carolina will not participate in the implementation of the REAL ID Act until: (1) the Department of Homeland Security, through regulation, takes all practical and prudent steps to ensure that the implementation of the REAL ID Act will not compromise the privacy of any citizen or resident of the State of South Carolina; (2) the federal government provides one hundred percent of the funding necessary for the implementation of the REAL ID Act; and (3) the federal government, through regulation by the Department of Homeland Security, adopts the changes to the REAL ID Act as outlined in the report entitled 'The REAL ID Act: National Impact Analysis' of the National Conference of State Legislatures, the National Governor's Association and the American Association of Motor Vehicle Administrators' published September 2006, or as amended since then. On May 24, 2007, **S.449** received a favorable with amendment report from the House Education and Public Works Committee.*

ORGAN AND TISSUE DONOR PROGRAM ESTABLISHED IN THE DEPARTMENT OF CORRECTIONS

See summary under Family/Health

RURAL INFRASTRUCTURE ACT

The House of Representatives approved and sent to the Senate **H.3666**, the "South Carolina Rural Infrastructure Act." The legislation establishes the South Carolina Rural Infrastructure Authority and provides for its governance, powers, and duties. The authority is charged with assisting municipalities, counties, special purpose and public service districts, and public works commissions in constructing and improving rural infrastructure by providing loans and other financial assistance such as grants, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, and provision of bond or other debt financing instrument security. For these purposes, the authority administers a newly-created South Carolina Rural Infrastructure Fund which is authorized to receive state appropriations, federal funds, contributions, donations, loan repayments, and other available funds.

The authority may provide loans and other financial assistance to an eligible entity to pay for all or part of the eligible cost of a qualified project. Before providing a loan or other

Legislative Update, May 29, 2007
Major Issues #3

financial assistance to a qualified borrower, the authority must obtain the review and approval of the Joint Bond Review Committee. The term of the loan or other financial assistance must not exceed the useful life of the project. The authority may require the eligible entity to enter into a financing agreement in connection with its loan obligation or other financial assistance.

Following the close of each state fiscal year, the authority shall submit an annual report of its activities to the Governor and to the General Assembly. An independent certified public accountant shall perform an audit of the books and accounts of the authority at least once in each state fiscal year.

*STATUS: On May 17, 2007, the House of Representatives approved **H.3666** and sent the bill to the Senate where it has been referred to the Finance Committee.*

"SOUTH CAROLINA PRIORITY INVESTMENT ACT"

Current law provides that a local comprehensive plan of local planning commissions must include certain elements. The bill provides definitions for several terms related to these comprehensive plans.

This bill amends the housing element requirement so as to require an analysis to ascertain unnecessary nonessential housing regulatory requirements that add to the cost of developing affordable housing but are not necessary to protect the public. The bill further provides that the housing element must include an analysis of market-based incentives that may be made available to encourage development of affordable housing.

The bill requires these comprehensive plans to include a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element.

The bill also requires these comprehensive plans to include a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads and schools. The recommendation of those projects for public expenditure must be done through cooperation with adjacent and relevant jurisdictions and agencies.

*STATUS: **S.266** (R52) was signed by the Governor on May 23, 2007.*

STATE APPROPRIATIONS LIMITS

The House of Representatives approved and sent to the Senate **H.3295**, a bill establishing new limits on state appropriations that first apply to appropriations for fiscal year 2008-2009. The bill provides that, in addition to all other applicable constitutional and statutory limitations on general fund appropriations, total general fund appropriations

Legislative Update, May 29, 2007
Major Issues #3

for the fiscal year may not exceed the lesser of: (a) one hundred six percent of the adjusted base-year estimate made by the Board of Economic Advisors; or (b) the adjusted base-year estimate increased by a percentage equal to the state's growth in population and a percentage equal to any increase in the consumer price index. The adjusted base-year estimate is the recurring and nonrecurring general fund estimate made by the Board of Economic Advisors on February 15, 2007 for fiscal year 2007-2008. The Director of the Office of State Budget must certify compliance with these new limitations before the Governor may submit a proposed budget and before the annual general appropriations bill may be given third reading in the House of Representatives and Senate. Under the legislation, the General Assembly is authorized to declare a financial emergency and suspend these limitations on appropriations for any one fiscal year for a specific amount by a special vote (an affirmative recorded roll-call vote in each branch of the General Assembly by two-thirds of the members present and voting but not less than three-fifths of the total membership in each branch).

H.3295 creates the Spending Limit Reserve Fund as a separate and distinct fund in the State Treasury that is to receive all general fund revenues accumulated in a fiscal year in excess of the appropriations limits provided in this legislation. Revenues credited to the Spending Limit Reserve Fund in a fiscal year may be appropriated by the General Assembly in its regular session in the year following the close of the applicable fiscal year. The Spending Limit Reserve Fund must be used to replenish the State's General Reserve Fund should that fund fall below its required minimum balance. Such amounts do not replace or supplant other required replenishments, and, to the extent that concurrent replenishments of the General Reserve Fund exceed the amount necessary for its full funding, the General Reserve Fund is deemed to require an annual minimum balance equal to this increased amount not to exceed a total balance equal to four percent of general fund revenue in the latest completed fiscal year. After this priority is met, revenues that remain in the Spending Limit Reserve Fund may be utilized only for the following purposes: (1) temporary tax reductions; (2) infrastructure improvements including fixed transportation facilities such as highway, rail, water and air, and basic facilities, services, and installations needed for the functioning of government such as water, sewer, and public sector communications; (3) school buildings; (4) school buses; and (5) expenses incurred by the State as a result of natural or other disasters declared by the President of the United States. Funding for a capital project must be appropriated from the fund in one installment and all appropriations must be made by means of a joint resolution originating in the House of Representatives.

*STATUS: The House of Representative approved **H.3295** on February 16, 2007, and sent the bill to the Senate where it has been referred to the Finance Committee.*

SUNSET REVIEW OF STATE GOVERNMENT PROGRAMS

The House of Representatives approved and sent to the Senate **H.3024**, a bill providing for sunset review of state government programs. The legislation establishes the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council, to establish procedures providing for the manner in which the programs of certain agencies and departments of State government must be evaluated to determine if they should be continued in existence, modified, or terminated. The legislation establishes the procedures by which these programs must be continued, modified, or terminated.

*STATUS: The House of Representatives approved **H.3024** on April 25, 2007, and sent the bill to the Senate where it has been referred to the Judiciary Committee.*

"TRAFFIC EDUCATION PROGRAM ACT"

See summary under Criminal Justice/The Courts

VOLUNTEER STRATEGIC ASSISTANCE AND FIRE EQUIPMENT ACT (V-SAFE)

The House of Representatives approved and sent to the Senate **H.3045**, a bill enacting the "Volunteer Strategic Assistance and Fire Equipment Act of 2007 (V-SAFE)." The legislation requires the General Assembly to appropriate not more than \$3 million annually to offer grants of not more than \$30,000 to eligible volunteer and combination fire departments for the purpose of protecting local communities and regional response areas from incidents of fire, hazardous materials, and terrorism, and to provide for the safety of volunteer firefighters. The legislation specifies the purposes for which grant money must be used, including fire suppression equipment, self-contained breathing apparatus, training, protective clothing, decontamination equipment, and special operations vehicles. The legislation provides that the grants must be administered by the State Fire Marshall in conjunction with a peer review panel. The State Fire Marshall is required to submit an annual report to the chairmen of the House Ways and Means and Senate Finance Committees detailing the grant awards and corresponding fire department purchases. At least three percent of the funds of this legislation must be awarded to the South Carolina State Firefighters Association annually for the purpose of establishing and maintaining a recruitment and retention program for volunteer firefighters.

*STATUS: The House of Representatives approved **H.3045** on April 25, 2007, and sent the bill to the Senate. On May 17, the Senate adopted the amendment to the legislation proposed by its Finance Committee and gave the bill second reading approval.*

TAXATION

"ALL-TERRAIN VEHICLE SAFETY ACT" or "CHANDLER'S LAW"

See summary under Transportation

CIGARETTE TAX INCREASE AND A REDUCTION IN THE SALES TAX ON GROCERIES

The House of Representatives approved and sent to the Senate **H.3567**, a bill providing for a cigarette tax increase and a reduction in the sales tax on groceries. The legislation provides for an additional 1.5-cent surtax on each cigarette, which amounts to an additional 30 cents collected on each pack of twenty cigarettes. The revenue of the new

Legislative Update, May 29, 2007
Major Issues #3

surtax must be credited to the newly-established Groceries' Sales Tax Relief Fund and used to reduce the state sales and use tax imposed on the gross proceeds of the sale or sales price of unprepared food that may be purchased lawfully with United States Department of Agriculture food coupons. The legislation reduces the state sales tax rate for groceries from 3% to 1.4%. The legislation provides for transfers from the State's general fund to the Education Improvement Act Fund in amounts sufficient to offset the estimated loss of revenue from this sales tax rate reduction. The legislation also provides that in any fiscal year that the license tax on cigarettes is greater than seven cents a pack, the General Assembly shall appropriate one million dollars in the annual general appropriations act to the Department of Agriculture for research and promotion of healthy lifestyles with food grown in this State.

*STATUS: The House of Representatives approved **H.3567** on May 1, 2007, and sent the bill to the Senate. On May 16, the Senate Finance Committee reported out the bill favorable with amendments and the legislation was set for special order on May 22.*

GROCERIES SALES TAX PHASE-OUT

The Senate approved and sent to the House of Representatives **S.656**, which provides for the gradual elimination of sales taxes collected on groceries. This bill reduces the sales tax on unprepared food that may be purchased lawfully with United States Department of Agriculture food coupons from three percent to one percent beginning November 2007. In each subsequent year, the legislation reduces this sales tax rate on qualifying foodstuffs by one-half percent, so long as the Board of Economic Advisors forecasts general fund revenue growth of at least five percent for the upcoming fiscal year. Once the rate reaches zero, the legislation provides for a sales tax exemption for these grocery items. The legislation provides for transfers of funds to the Education Improvement Act Fund in amounts sufficient to offset the estimated loss of revenue from sales tax rate reductions. The Senate has provided for the appropriation of funds for the implementation of the phase-out in its version of **H.3620**, the Fiscal Year 2007-2008 General Appropriations Act.

*STATUS: The Senate approved **S.656** on April 27, 2007, and sent the bill to the House of Representatives. On May 16, the House Ways and Means Committee gave the bill a report of favorable with amendments. The House adjourned debate on the legislation until May 29.*

INCOME TAX RELIEF

The House of Representatives has approved and sent to the Senate legislation that reduces the personal income tax top marginal rate from 7 percent to 6.8 percent. This reduction is included in the House-approved version of **H.3620**, the Fiscal Year 2007-2008 General Appropriations Act as a Part II permanent law provision. This state income tax relief legislation has also been included in **H.3372**, which provides for technical revisions and updates to taxation provisions, and approved by the House as part of that bill. The House Ways and Means Committee has also reported out **S.656**

with a proposed amendment that includes the state income tax relief provisions in the bill.

*STATUS: **H.3620** has been approved by the House of Representatives and the Senate in different versions and a conference committee has been appointed by the bodies to work on compromise legislation. The House of Representatives approved **H.3372** on April 25, 2007, and sent the bill to the Senate where it has been referred to the Finance Committee. On May 16, the House Ways and Means Committee reported out **S.656** with a proposed amendment that includes the state income tax relief provisions. The House adjourned debate on **S.656** until May 29.*

TRANSPORTATION

"ALL-TERRAIN VEHICLE SAFETY ACT" or "CHANDLER'S LAW"

The legislation provides that it is unlawful for a parent or legal guardian to knowingly permit his child or ward six years of age or younger to operate an all-terrain vehicle (ATV).

A person fifteen years old or younger may not operate an ATV within this State unless the person possesses a safety certificate indicating successful completion of an ATV safety course approved by the ATV Safety Institute. The legislation further provides that a person fifteen years of age or younger must wear a safety helmet and eye protection while operating an ATV.

The following restrictions apply to operation of an ATV on those lands open to the public:

- It is unlawful to operate an ATV except in compliance with the local regulations and restrictions.
- A person fifteen years of age or younger must be accompanied by an adult.
- It is unlawful to operate an ATV between one-half hour after sunset to one-half hour before sunrise unless it is equipped with operational headlights, and they are on.
- It is unlawful to cross an unbridged stream except at a designated ford or crossing. Riding in any water bodies or watercourses is unlawful.
- An ATV must have an effective muffler system in good working condition; a United States Department of Agriculture Forest Service approved spark arrester in good working condition, and a brake system in good operating condition.
- It is unlawful to operate an ATV while under the influence of alcohol or any controlled substance.
- It is unlawful to operate an ATV in a negligent or reckless manner.
- It is unlawful to operate an ATV in a manner that damages flora or fauna, roads, trails, firebreaks, signs, gates, guardrails, bridges, fencing, or other public property.

Legislative Update, May 29, 2007
Major Issues #3

The legislation provides that ATVs are exempt from *ad valorem* personal property taxes beginning with calendar year 2007.

Violations of this legislation, unless otherwise specified, are misdemeanors punishable by a fine of not less than \$50 dollars nor more than \$200 dollars.

The legislation also provides for the titling of ATVs through the Department of Motor Vehicles.

*STATUS: **S.348** (R.41) was vetoed by the Governor on May 15, 2007.*

DEPARTMENT OF TRANSPORTATION RESTRUCTURING

The House of Representatives approved and sent to the Senate **H.3575**, a bill providing for comprehensive restructuring of the South Carolina Department of Transportation to enhance accountability at the agency responsible for the State's roads.

Secretary of Transportation

The legislation establishes the position of Secretary of Transportation to be appointed by the Governor and serve at his pleasure. The Secretary replaces the department's existing chief administrative officer, the Director who is appointed by the Department of Transportation Commission under current law. Under the legislation, the Secretary of Transportation appoints a deputy director for each the department's division to serve at his pleasure, except for the internal audit director and internal auditors who shall report to and serve at the pleasure of the commission. The DOT District Engineering Administrators or individuals performing the function of district engineering administrators who oversee the seven Highway Engineering Districts, serve at the Secretary's pleasure.

Reorganization of the Department of Transportation Commission

The legislation revises the composition of the Department of Transportation Commission and provides for new qualifications criteria, election procedures, terms of office, and compensation limits. The legislation eliminates the current provisions under which one commissioner is elected from each of the State's six congressional districts by the district's legislative delegation in the General Assembly with a seventh at-large member selected by the Governor with the advice and consent of the Senate. Instead, the commission is composed of one member from each of the State's seven highway engineering districts elected during a joint assembly of the House and Senate. The legislation provides that a commissioner must have at least a baccalaureate degree or a background of at least five years in a combination of the following: (a) transportation; (b) construction; (c) finance; (d) law; (e) environmental issues; (f) management; or (g) engineering. A member of the General Assembly is not eligible for election as commissioner until he has been out of office for at least one year. A Transportation Review Committee is established to screen candidates for appointment to the commission. The review committee is composed of ten members, three of whom must be members of the House of Representatives, including the Chairman of the Education and Public Works Committee, or his designee, and the Chairman of the Ways and

Legislative Update, May 29, 2007
Major Issues #3

Means Committee, or his designee, and one member appointed by the Speaker of the House of Representatives. Three of the members must be members of the Senate, including the Chairman of the Transportation Committee, or his designee, the Chairman of the Senate Finance Committee, or his designee, and one member appointed by the President Pro Tempore of the Senate. Two members of the committee must be appointed by the Speaker of the House of Representatives from the public at large, and two members of the committee must be appointed by the President Pro Tempore of the Senate from the public at large.

Each commissioner shall serve for a term of four years. Initial terms of service are, however, structured to allow for staggered terms for the replacement of commissioners. Commissioners shall continue to serve until their successors are elected and qualify. Each successive commissioner must be appointed from a different county within a highway engineering district based upon the alphabetic order of the counties within the district. Members of the commission may be removed for cause. The chairman of the commission shall be a commissioner elected by a majority vote of the members of the commission and serve a term of two years.

Commissioners receive one thousand dollars for each month of service for district expenses and must be reimbursed for per diem and mileage as is provided for members of the General Assembly when traveling to Columbia for official commission functions.

Activities Requiring Commission Approval

The legislation requires the commission to approve the following activities: (1) the sale of surplus property by the department; (2) the advertisement for consultant contracts and authorize the selection of consultants by department personnel; (3) the adding to and deletion of roads from the State Highway System; (4) the execution of contracts by the department; (5) the department's annual budget; (6) the statewide transportation improvement program; (7) the dedication and naming of highway facilities by the department; (8) any contract entered into by the department with a value in excess of five hundred thousand dollars; (9) additional contracts entered into by the department during a fiscal year with an entity that has already received individual contracts during that fiscal year that together are worth at least five hundred thousand dollars; (10) all contracts relating to road construction and maintenance; and, (11) accept the Transportation Improvement Program.

Project Priority List

The legislation requires the department to establish within the Statewide Transportation Improvement Program a priority list of projects to be undertaken. Once the priority list has been established, it shall not be changed without two-thirds approval by the commission. When compiling this list of projects, the department shall use, but is not limited to use, the following criteria: (1) financial viability; (2) public safety; (3) potential for economic development; (4) traffic volume; (5) truck traffic; (6) the pavement quality index; and, (7) environmental impact. Projects included in the transportation improvement plan and projects submitted by the State Infrastructure Bank are excluded from modification by the Secretary of Transportation or the Department of Transportation Commissioners.

Legislative Update, May 29, 2007
Major Issues #3

The department shall promulgate regulations that utilize these criteria for ranking projects in each highway engineering district. The commission shall annually review a road maintenance and bridge repair plan within each highway engineering district.

Public Hearings on Projects

The department shall conduct a public hearing in each county in which a public hearing is required by federal regulations to allow the department to share information regarding the project with the local community and to allow the local community to address its concerns with department officials. The hearing must include the opportunity for members of the public to address a hearing officer in a format in which comments can be heard by the general public attending the hearing or in a private setting, whichever is the speakers' choice.

South Carolina Procurement Code Exemptions

The legislation eliminates the DOT's expansive procurement code exemption and, instead, exempts from the South Carolina Procurement Code the construction, maintenance, and repair of bridges, highways, and roads by the Department of Transportation when these projects receive federal funding and must comply with applicable federal laws and regulations. The legislation exempts the South Carolina Transportation Infrastructure Bank, Councils of Government, County Transportation Committees, and Metropolitan Planning Organizations from the provisions of the South Carolina Procurement Code.

Audits

The legislation requires procurement audits to verify the validity of DOT Procurement Code exemptions.

The legislation creates an Internal Audit Division within the DOT and requires the division deputy director for internal audits to examine the finances of the department and provide an annual financial report to the commission.

The Legislative Audit Council is required to contract for an independent performance and compliance audit of the department's finance and administration division, mass transit division, and construction engineering and planning division. This audit should be completed by January 15, 2009. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the initial findings. The costs of these audits are an operating expense of the department. Copies of these audits must be made available to the Governor and the chairmen of the Senate Finance and Transportation Committees, and the House of Representatives Ways and Means and Education and Public Works Committees.

At the end of each month, the Department of Transportation must submit an itemized and complete report of all revenues spent and for what purpose to the State Treasurer, the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. Funds for the next month's expenditures must not be released to the department until the report is received by all the required recipients.

The department is required to conduct an annual review all real property titled to it and make a determination as to whether the property is in excess of the department's needs. Upon approval of the Engineering Administrator and the District Commissioner, properties determined to be in excess of the department's needs must be disposed of at fair market value

Ethics Provisions

The legislation creates a Division of Human Resources within the DOT and requires the deputy director for human resources to: (1) employ an ethics compliance officer to ensure that the department's employees and commission comply fully with all laws that govern their ethical conduct, and (2) conduct two hours of mandatory ethics training seminars for all department employees and commissioners on a biennial basis. However, a mandatory two-hour ethics seminar must be conducted for each newly-hired

Legislative Update, May 29, 2007
Major Issues #3

employee and newly-elected commissioner within one month of their employment or election.

The legislation subjects the Department of Transportation Commission and the department's employees to the legal restrictions imposed upon the activities of lobbyists and lobbyists' principals.

The legislation requires DOT District Engineering Administrators to file a statement of economic interests.

New Funding

The legislation provides that in calculating estimated state individual and corporate income tax revenues for a fiscal year, the Board of Economic Advisors shall deduct the following amounts that must be credited to the Department of Transportation for road construction and maintenance as follows: for Fiscal Year 2007-2008: \$40 million; for Fiscal Year 2008-2009: \$80 million; for Fiscal Year 2009-2010: \$120 million; for Fiscal Year 2010-2011: \$160 million; and for Fiscal Year 2011-2012 and thereafter: \$200 million. In each of these fiscal years, the Department of Transportation must utilize half of these funds for an annual contribution from non-state tax resources to the State Highway Account of the South Carolina Transportation Infrastructure Bank and the other half of these funds for an annual contribution to the State Non-Federal Aid Highway Fund of the South Carolina Department of Transportation for maintenance and construction with seventy-five percent of the funds designated for maintenance and twenty-five percent designated for construction.

*The Senate approved and sent to the House of Representatives **S.355**, a bill providing for Department of Transportation Restructuring. The legislation provides for the Department of Transportation to be governed by a Board of seven members: one board member is to be elected from each Congressional District by the legislative delegation serving the Congressional District and one board member is to be appointed by the Governor, with the advice and consent of the Senate, from the state at-large. The legislation establishes the Joint Transportation Review Committee composed of legislators and their appointees to screen the qualifications of candidates to the Board and review Board activities. Under the legislation, the Governor appoints, with the advice and consent of the Senate, an Executive Director who serves at the Governor's pleasure. Unless extended by subsequent act of the General Assembly, the Governor's authority to appoint the Executive Director terminates and is devolved upon the Department of Transportation Board effective July 1, 2015. The Department of Transportation Board appoints, with the advice and consent of the Senate, a Chief Highway Engineer who shall serve for a term of two years and who may be removed by the board only for specified causes. The legislation creates an Office of Internal Audit that must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The Board and all SCDOT employees are subject to the provisions of the State Ethics Act and the South Carolina Tort Claims Act.*

*STATUS: The House of Representatives approved **H.3575** on March 28, 2007, and sent the bill to the Senate where it was referred to the Transportation Committee. On April 3, **H.3575** was recalled from the Senate Transportation Committee. The House of Representatives also included the Department of Transportation restructuring legislation in **H.3620**, the Fiscal Year 2007-2008 General Appropriations Act as a Part II permanent*

*law provision. **H.3620** has been approved by the House of Representatives and the Senate in different versions and a conference committee has been appointed by the bodies to work on compromise legislation. The Senate approved **S.355** on April 5, 2007, and sent the bill to the House. On April 19, the House amended the legislation to contain its own version of DOT restructuring and returned the bill to the Senate. On May 17, the Senate returned **S.355** to the House with amendments. On May 24, a conference committee was appointed to address the differences of the bodies over **S.355**.*

"PUBLIC WATERS NUISANCE ABATEMENT ACT"

See summary under Conservation/Energy heading.

WORKERS' COMPENSATION

The Senate and the House of Representatives have approved different versions of **S.332**, a bill revising the State's workers' compensation system, which pays disability benefits and necessary medical expenses for workers who sustain injuries in the course of their employment. The version approved by the House contains the following noteworthy provisions:

The legislation contains provisions geared towards combating workers' compensation fraud. The definition of "false statement and misrepresentation" is expanded to include intentional false report of business activities or miscount or misclassification by an employer of its employees to obtain a favorable insurance premium, payment schedule or other economic benefit. The legislation enhances the crime classification and penalties for intentionally making a false statement or misrepresentation. The Attorney General's Office is authorized to hire a forensic accountant to be assigned to the Insurance Fraud Division.

The legislation addresses several recent South Carolina Supreme Court decisions relating to workers' compensation. The legislation permits communications between the employee's physicians/health care providers and the employer regarding medical information related to a workplace injury. The bill strengthens requirements for expert medical testimony in medically complex cases. The legislation provides more stringent standards for: determining occupational disease cases; determining the award of future medicals, and obtaining an award based on a change of condition. The legislation revises provisions relating to awards in instances when an employee has a pre-existing condition. The legislation adds the loss of the shoulder and the loss of the hip to a statutory schedule of injuries that specifies how the amount of disability compensation is to be calculated and provides for the duration of the compensation.

The legislation eliminates the current presumption of total disability upon the loss of use of 50% or more of the back. Awards for injuries to the back are instead to be limited to the ratio that the partial loss bears to total loss similar to the ratio used for other body parts.

Legislative Update, May 29, 2007
Major Issues #3

New stringent criteria are established for repetitive trauma. Under the legislation an injury is considered a compensable repetitive trauma injury only when medical evidence establishes that there is a direct causal relationship between the injury and the repetitive activities that occurred while the employee was engaged in the regular duties of his employment.

The legislation revises the state's Second Injury Fund, an insurance program established to reduce risks employers may bear for future claims from previously injured workers. The legislation eliminates most of the items in the list of covered preexisting conditions of the Second Injury Fund so as to limit it to only three qualifying preexisting conditions: (1) amputated foot, leg, arm or hand; (2) loss of sight of one or both eyes or uncorrected vision of more than 75% bilateral; or (3) ruptured intervertebral disc. The legislation also provides that the Second Injury Fund is to be dissolved if paid claims of the fund are \$8 million or more during the 2011-2012 fiscal year.

The legislation expands the membership of the Workers' Compensation Commission from seven to eleven members and designates three of the members as an appellate panel that hears and decides petitions for review of single commissioner decisions on a full-time basis. The legislation provides for appeals from the Workers' Compensation Commission to go directly to the Court of Appeals rather than the circuit court.

The legislation establishes the criteria under which a trucker is to be classified as an independent contractor that is not included under workers' compensation provisions. In order to be considered independent contractors, individual owners of tractor-trailers must have an independent contractor contract and either own, lease or have an installment purchase contract between an affiliate of the motor carrier or another lessor or seller. The lease or installment purchase must be on terms equal to terms available and customary in usual retail transactions.

The legislation provides that, at least 30 days prior to using new rates, every workers' compensation insurer must file with the Department of Insurance its multiplier for expenses, assessments, profit, and contingencies and any information relied upon by the insurer to support the multiplier and any modification to loss costs. A copy of the filing by the insurer must be provided to the Consumer Advocate. An actuary for the Department of Insurance must review rate filings. The Director may at any time disapprove of an insurer's most recent multiplier for expenses, assessments, profit, and contingencies if the Director determines that it does not meet requirements.

The legislation requires that a report be issued to the General Assembly by the first of January each year that evaluates the state of the workers' compensation insurance market in South Carolina. The report must contain an analysis of the availability and affordability of workers' compensation coverage and document compliance with requirements regarding both workers' compensation loss cost filings submitted by an advisory or rating organization and multiplier filings submitted by every insurer writing workers' compensation insurance.

The Senate-approved version of the legislation contains various alternative provisions. The legislation provides that if a claimant brings an action before the commission to enforce an order authorizing medical treatment or payment of benefits and the commission determines that an insurer, a self-insured employer, a self-insured fund, or an adjuster, without good cause, failed to authorize medical treatment and/or pay

Legislative Update, May 29, 2007
Major Issues #3

benefits when ordered to do so by the commission, the insurer, the self-insured employer, the self-insured fund, or the adjuster must pay the claimant's attorneys' fees and costs of enforcing the order. The commission may impose sanctions for willful disobedience of an order. The legislation provides for an alternate means of closing the Second Injury Fund.

*STATUS: On April 10, 2007, the Senate approved **S.332** and sent the bill to the House. On May 17, the House returned the bill to the Senate with amendments. Both bodies having insisted upon their respective versions of the bill, the House appointed a conference committee on May 24 to address differences with the Senate on the legislation.*

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.net>) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

NOTE: THE LEGISLATIVE UPDATE IS AVAILABLE TO LEGISLATIVE TRACKING SUBSCRIBERS. YOU MAY REGISTER FOR THIS FREE SERVICE ON THE SOUTH CAROLINA GENERAL ASSEMBLY HOME PAGE BY CLICKING ON "ELECTRONIC TRACKING" (UNDER "LEGISLATIVE RESOURCES"), THEN CLICKING ON "ADD NEW SUBSCRIPTION RECORD" AND COMPLETING THAT FORM.